IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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COMCAST CABLE COMMUNICATIONS, LLC, et al., Plaintiffs	:	CIVIL ACTION NO. 12-0859
v.	:	Philadelphia, Pennsylvania
	:	February 16, 2017
SPRINT COMMUNICATIONS COMPANY L.P., et al., Defendants	:	9:40 o'clock a.m.

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JURY TRIAL - DAY 13
BEFORE THE HONORABLE JAN E. DUBOIS
SENIOR UNITED STATES DISTRICT COURT JUDGE

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(Proceedings recorded by For The Record electronic sound recording; transcript produced by AAERT-certified transcribers.

(The following occurred in open court at 9:40 o'clock a.m.)

THE COURT: Good morning, everybody.

ALL: Good morning, your Honor.

THE COURT: Be seated, please.

I gather you have an issue you wish to address?

MR. RIOPELLE: It's not an issue, just some housekeeping. At the end of the day Comcast had moved some exhibits and you had given me some time to look at them to see if we had any objections. So just for the record, for PX-77, PX-145 and PX-908, Sprint has no objections to those exhibits coming into evidence. For PX-900, we do have an objection based on hearsay. Now, my understanding is that they have moved it off their evidence list into their received list; is that correct, Mr. Hoffman?

MR. HOFFMAN: That is correct.

MR. RIOPELLE: The second thing, your Honor, just so the record is complete --

THE COURT: Let me make a note of that.

MR. RIOPELLE: Yes.

(Pause.)

THE COURT: 900 is withdrawn?

MR. HOFFMAN: And marked for identification purposes, your Honor.

THE COURT: Fine.

MR. RIOPELLE: The second thing is we'd like to tender for the record the transcripts of three of the video depositions we played, because on the transcript it just says video played. And so just for purposes of the record we have the transcripts. They are not being marked as exhibits, because they're not to go back to the jury, but we just want the record to be complete.

THE COURT: Fine. And they've been marked in what way?

MR. RIOPELLE: The only thing they say on them right now is they have the name of the deponent, Evan Koch, Sean Wilson and Mr. Tirana.

THE COURT: Are the videos marked as exhibits?

MR. RIOPELLE: The videos were played, I don't think the video itself was marked as an exhibit, no. And we're not tendering the actual video, just the transcript, just as if they testified here in court they would be in the transcript.

THE COURT: All right. I think we ought to mark them --

MR. RIOPELLE: How about if I give them numbers DX-700, 701 and 702?

THE COURT: Fine.

MR. RIOPELLE: So just so the record is clear, the deposition transcript of Mr. Tirana will be DX-700, the deposition transcript of Mr. Sean Wilson will be DX-701, and

the deposition transcript of Mr. Koch will be DX-702.

THE COURT: Fine. I think for both sides we want an up-to-date exhibit list covering all of the exhibits, number one, that have been received in evidence and, number two, that have been marked but not received in evidence.

MR. RIOPELLE: And then -- oh, sorry.

THE COURT: Go ahead.

MR. RIOPELLE: Then the last thing is, as we know some of the slide -- the demonstrative slide decks are going back, Comcast has noted on Dr. Akl's slide deck the changes that were made and they have been very cooperative in doing so, we just thought that the Court at the time it is instructing the jury may want to point out that the slide decks have been annotated to show what was changed, just so they understand it wasn't exactly the slide deck that they saw during the presentation.

THE COURT: To show what was changed by the witness?

MR. RIOPELLE: Correct.

MR. GOETTLE: So, your Honor, the objection that Sprint had raised was that Dr. Akl had taken Sprint documents and had annotated them in his explanations and Sprint was concerned that it wouldn't be abundantly clear to the jury what Dr. Akl added versus what was in the original document. And so we went through every slide and custom wrote on it exactly what he added. And so I think this is a good point

that the jury hasn't seen those annotations yet and so it would be useful for them to be instructed that these are the slides that you saw during the presentations, they have been modified only to indicate what they're indicating on what was added.

THE COURT: Fine.

MR. GOETTLE: Thank you.

MR. RIOPELLE: Thank you, your Honor.

THE COURT: Yesterday we discussed the way in which the exhibits would be presented to the jury and we ended up concluding that banker's boxes would be the best way to do that. I'm wondering whether we should give the jury exhibit lists. I can't see -- I'm picturing myself in the jury room and the court officer comes in and says, here are the exhibits, and there are five or six or seven cartons of exhibits.

MR. GOETTLE: That is fine with Comcast and I think we actually have that. You're talking so it says what the exhibit number is and then like the title of what the document actually is? That's fine with Comcast.

MR. RIOPELLE: I believe we would need to create that. We have right now the longer one, we would need to take some off. And then the second thing is I think both sides should check the descriptions of each exhibit from the other side just to make sure that --

THE COURT: I think that will work, though. This is just an idea. I've not done that, at least not recently, but with lengthy trials I think looking at three or four or five or more banker's boxes of exhibits is going to be formidable and if they have an exhibit list, it's not exactly the greatest help unless they have the number. If they don't have the number and don't have a detailed description, it will be difficult. And even if they do have a description of the exhibit, it will be difficult to find it if they don't have the number.

What has been your experience in other cases with this issue?

MR. GOETTLE: I think what you're suggesting is a great idea. I have not done that in another case, but I think it's a great idea, I don't see any reason not to do it.

THE COURT: Oh, I don't see any reason not to, I wonder if there's a better idea.

MR. RIOPELLE: I have done it in other cases, as a matter of fact, and it was exactly like you just described. We gave a -- actually it was a consolidated list, but I don't think it matters here, of exhibits and the only thing is both sides checked the other side's own descriptions, just so you weren't bringing over descriptions you had on the original exhibit list that may have been -- and both sides, I mean --

THE COURT: I think we'll have time --

MR. RIOPELLE: -- we may be guilty of it too, so --

THE COURT: -- we'll have time to do this. I don't think -- well, I'm 99-percent certain I'm not going to charge before lunch, we might not even get rebuttal in before lunch, so you'll have time to create this exhibit list. Good.

The final -- I hope final -- revisions to the verdict sheet and the charge were made, we sent those documents to you last night. First the verdict sheet, particularly the transition on page 3, okay?

MR. GOETTLE: It looks great. Thank you, your Honor.

THE COURT: Fine.

MR. RIOPELLE: It's fine, your Honor.

THE COURT: Charge, any changes?

MR. GOETTLE: No, your Honor.

MR. RIOPELLE: No changes.

THE COURT: And you had that one issue regarding clear and convincing evidence and the person having ordinary skill in the art. The addition that you wanted --

MR. GOETTLE: The higher the level --

THE COURT: -- the point that says --

MR. RIOPELLE: Right.

THE COURT: -- "it will be easier for you to find"?

MR. RIOPELLE: Yeah, I was just going to make that objection at sidebar afterwards.

THE COURT: Fine. Nothing else, all right. Is my secretary in the courtroom? Ah, we can go ahead and prepare the charge, the copies of the charge for the jury, I want three copies in the notebook.

(Pause.)

(Jury in at 9:56 o'clock a.m.)

THE COURT: Good morning, everyone. Please be seated.

We've heard all the evidence in the case, as I told you yesterday, we'll now hear closing arguments. Mr. Goettle of Sprint will present his closing argument first and then we'll hear from -- did I say Sprint?

MR. GOETTLE: You did, your Honor. I said I got promoted.

(Laughter.)

THE COURT: It's been a long trial. Mr. Goettle of Comcast will present his closing argument first, Mr. Finkelson will follow for Sprint, and because Comcast has the burden of proof, Mr. Goettle will have a rebuttal. So we'll hearing closing arguments in three parts.

You may proceed.

MR. GOETTLE: Thank you, your Honor.

CLOSING ARGUMENT

MR. GOETTLE: A month, two months, a year ago virtually everybody else in this room knew they were going to

be here for three weeks, you were the only people who didn't know that, and I listened to you at voir dire and I knew this wasn't welcome. So it sounds trite in a closing argument to thank the jury, but we thank you, Comcast thanks you, because not only did you come here every day for three weeks when you had other things to do, other things that no doubt for you were better things to do than to sit here for three weeks, you came here and you listened, or at least you looked like you were listening that entire time, you took notes. I've never seen anything like this, this complicated case for this duration of time to take notes.

So I say thank you, it comes from the heart from my team, we mean it, it sounds trite, and I'm going to get to the business at hand so that you can do what you need to do to get out of here.

I made you three promises in my opening: I told you I would show you Sprint infringes this patent, I would show you what the patent about and I would show you that Sprint infringes it. I promised that to you and I came through on my promise.

I told you that I would -- the evidence would show you why Comcast is suing Sprint. Why does Comcast have the patent in the first place? Why is Comcast suing Sprint for the use made of this invention for a patent that Comcast bought? I told you that I would explain that to you, I told

you the evidence would show you it through Mr. Finnegan and through Mr. Dellinger, and I followed through on that promise.

The third promise I made to you is I would show you the damages and why $154 million was a reasonable royalty for Sprint's use made of the invention, that use made to the tune of 2.6 trillion, over 2.6 trillion acts of infringement over the relevant time period in this case, and the evidence came in through Ms. Riley and Mr. Webber and they showed you how they came up with their calculations. And the way they came up with their calculations was by relying on Sprint's documents, the very same documents that Sprint uses to report its taxes, that Sprint uses before the Federal Government, that Sprint uses to report on how they're doing with their investors, those same documents are what Ms. Riley and Mr. Webber relied on. I came through on my three promises.

Sprint's very first sentence to you I took as a promise and I don't think they fulfilled, the very first sentence to you in this case was Comcast is suing Sprint because Sprint wants to get into the cell market. Comcast is suing Sprint because they want Sprint to fund that entrance into the cellular network market. That was the very sentence. Not a single witness said that, not one. The only witness to address it directly said no -- and I'm going to show it to you -- said no, that's not true. And it's not

true and we're going to walk through, I'm going to explain to you in three parts again why we're here, why Comcast has the patent, I'm going to explain to you what this invention is and why Sprint infringes. And then I'm going to explain to you why Ms. Riley and Mr. Webber's calculations are a reasonable, reasonably royalty for Sprint's use made of this invention since 2006.

So here's my roadmap. I'm going to tell you right now, it's hard to do in the examinations, I tried to give you signals here and there of how long things were going to take, this is going to take me about an hour to walk through. But it's an hour worth spending because we just threw at you a whole bunch of witnesses in a complicated technology field, in a complicated damages case, it's a whole lot of information to absorb and my job is to somehow put some semblance to it, so that when you go back to the jury room, at least from Comcast's perspective, you know how we see the evidence, you know how we link this case together that was very long and very complicated. You can see it crystalize, this is my chance, if I do my job right, our position should be crystalized for you. So that's my job, I think it's an hour worth spending. My goal is that when I am done this and when I am done my rebuttal, my goal is that your deliberations might be easier, might be quicker.

So let's start from the beginning. Comcast in 2007

realized -- this is what Mr. Finnegan told you -- realized though sophisticated in technology, though sophisticated in the cable industry, was not sophisticated in the patent world, they hired Mr. Finnegan to come in. And Mr. Finnegan explained this to you and Mr. Dellinger said the same thing. Why does Comcast go out and buy patents? It's simple. Mr. Finnegan's experience had been that companies like Comcast get patents for defensive purposes. It's not the only reason that companies get patents. Companies buy patents for offensive purposes, to make money on patents. These witnesses came in here and they told you that's not what Comcast is doing. What they're doing is developing a drawer full of patents so that when those competitors, those would-be competitors come to Comcast with their patents and says, Comcast, you should pay us, we think you're using our invention, or worse, Comcast, you should get out of this line of business, this isn't for you, we have patents that block you from doing it.

Comcast needed the strategy that Mr. Finnegan had learned through his work with other companies, needed the defensive strategy. Fill up your drawer full of patents so that when they come with their patents, you open your drawer up, you take those patents out and you put them on table. And why do you do that? Because you want patents to be a wash. They have their patents, we have our patents, let's

not talk about patents, let's not bother people like you with patents; let's compete in the marketplace, let's resolve our disputes at the table. That's the strategy that Mr. Finnegan put in place when he was hired in 2007-2008 and that's what brings us here today and I'm going to get to that. And it works.

What Mr. Finnegan told you was they had looked at upwards of 100,000 patents since he has started and they only bought 200. Why is that significant, why does that bolster what I'm telling you what the strategy was? It bolsters it because if you're trying to buy patents to make money off of patents, you don't buy 200, you buy a lot, you buy a lot so that when you put them out on the table other people think, oh, geez, I better pay, because there's got to be something in there that I am doing that I should be paying for. But if you want to get your competitors to pay attention to you in the marketplace, to pay attention to you at the business table, what you do is you go out and you're selective. You get the patents that actually will matter to them, so that when you sit down you say this one matters to you, the patents are a wash, let's just compete. That's why that's significant testimony. And it works.

Verizon is a case in point this strategy works, because Verizon did come knocking, Verizon did come knocking and the patents are a wash with Verizon. And now what is

Comcast doing? They're competing with Verizon in the marketplace. FiOS is released and we all have seen the commercials, they go at it, they go at it in their commercials. We've all seen it, we know, Comcast and FiOS, those are our options. And I heard you at sidebar when we were doing voir dire Judge DuBois asked every one of you, do you use Comcast? Some of you said yes, some of you had had instances of unhappiness with Comcast, but some of you said yes and some of you said no, I use FiOS. You know about this competition, it works.

And Mr. Marcus testified that he believes it is because of -- I'm on the wrong slide -- no, I'm not -- oh, I'm sorry, I confused AT&T with Verizon, but this strategy worked with Verizon because they're competing in the marketplace. That's a good thing, that's a good thing for all of us, because when companies compete in the marketplace it lowers price and it increases innovation. It lowers prices because now they have to compete and it increases innovation because now they have to kind of figure out a way to tweak their service to make it a little bit more attractive to their customers. It's a good thing.

And AT&T -- this is what I got confused about and I apologize -- Mr. Marcus testified that it's because of this defensive strategy that he thinks that AT&T and Comcast are leaving each other alone. This defensive strategy works.

And then Mr. Dellinger testified about the patent acquisition from Nokia, how did we buy the '870 Patent, and he talked to you about contacting Nokia in 2008 and then working through their patents and buying the patent in June of 2010.

So why -- again, like I said in my opening, this is why Comcast has the patent, now why is Comcast suing Sprint? In my opening I told you that the evidence would show why that is. The short of it is, ladies and gentlemen, that we didn't resolve the things at the negotiating table and Sprint sued Comcast in Kansas. That's the testimony from -- I skipped ahead, sorry -- that's the testimony from -- let me go to that slide so you know -- here Mr. Marcus says, that's the testimony from Mr. Marcus, "They sued us in Kansas, this is a lawsuit in response to that, a countersuit, a counterclaim in response to that."

But what I skipped was that before that we had been partners and that's significant, because again we're not here to monetize our patents, we're not here to get funding from Sprint, Comcast is not trying to get funding from Sprint to get into the cellular network market, that's not why we're here. We're here because Sprint sued Comcast first and we're implementing this strategy, the patent-acquisition strategy. You hope it doesn't come to this, you hope that you're not bothering jurors like you for three weeks on complicated

technology, complicated damages law, you hope it doesn't come to this, but when you have a strategy and you put it in place, you have to follow through with it; that's what strategies are for.

But before this Comcast and Sprint were partners, they were partners. And to me the single most important fact of how you can know that that is true is one of the very first phone calls that Mr. Finnegan made when he decided that he was going to go acquire patents for defensive purposes is he called Sprint, he called Mr. Harley Ball, he told you, the head of IP at Sprint, and he asked Mr. Harley Ball if Comcast could buy the patents. That's significant because it shows you that there was a partnership between Sprint and Comcast.

Comcast did not buy this patent to get Sprint to fund litigation to launch Comcast into the cellular industry. You don't go to your adversaries for patents. Why? If you go to your adversaries, then they're going to think, hey, maybe they do need our patents and we won't sell them our patents, we'll license our patents to them. You go to the folks who you think you can trust, who aren't going to take this and use it against it, that was why Mr. Finnegan called Sprint.

And you know that there was a partnership between Comcast and Sprint because you've seen it, you're going to see it in Sprint's rebuttal. You've seen this agreement

called the MVNO agreement that was in 2008. So you know it's true we were partners at that time; we're not now, but we were partners at that time.

Okay. So this is the testimony that I alluded to in the very beginning of Sprint's promise. Mr. Marcus was asked point blank, "Did you hear Sprint's lawyers' remarks telling this jury that this lawsuit is part of a plan to enter the cellular market?" And Mr. Marcus answered flatly, "There's no truth in it."

Okay. So I think if I was sitting here for three weeks I would want to know kind of like why, what the backdrop is, and that's why I went through that. I'll submit to you though, ladies and gentlemen, for your deliberations, it's not on the verdict form, the form that you're going to have to fill out, it's not a factor on the verdict form. What's on the verdict form is whether Sprint is infringing this patent and then, if so, what damages Comcast is owed for Sprint's use made of the invention. So let's talk about Sprint's infringement.

I started off by explaining to you that speed is what this patent is about and I followed through and showed you the evidence of that. This is right from the patent, this is the clips that Dr. Akl showed to you about holding the message outside the network, first confirming if the phone can receive the message, and then and only then sending

it in. Why? Because now you don't have to get those core network elements bogged down. Those elements that are charged with the duty of getting the phone connected to other phones and to other networks, don't bog them down with also having to track messages that can't get delivered, separate that functionality away from those core network elements so that those elements do not get distracted and slow things down.

I think it's intuitive that if your cellular network is not fast and the other provider's cellular network is fast, you're going to start thinking about switching. Speed is important to us, this patent is directed to speed. And Dr. Akl said that to you, I won't read what I have up on the slide, which number I can't even see, but what he's saying is he gives kind of a common example of speed. If you have a lot of things on your to-do list and you have to get them all done fast, well, it's harder to get them all done fast if there's a lot on the to-do list.

So what we're doing is those elements that are charged with getting the phone connected to other phones and to other networks, we're reducing their to-do list, we're taking away the to-do list of tracking the messages that can't get delivered and we're holding them and we're separating that functionality away, so that those computers charged with the core functions of connecting the phone to

other networks can focus on the task at hand. That's what Dr. Akl's analogy was.

And then the other piece of the invention is, and I explained this to you in the opening and Dr. Akl told you about it, there's a cost though. The invention is a little bit of a balance, there's a cost to having that functionality separated from those elements that are doing the connecting. The cost is this: now with that separated functionality, that messaging server that is now separated away, it doesn't know where the phone is, it doesn't know if the phone is on, it doesn't know anything about the subscriber, whether the subscriber has paid their bills, whether the phone is technologically capable of receiving the message, it doesn't know.

So the core network elements are charged with a duty, they're not off the hook completely. They don't have to deal with the message, but they still have to deal with the inquiry and the inquiry goes like this. If the cellular network, if these core elements charged with the connection duty, if they maintain their information by something other than the phone number, but instead use an internal identifier for that phone, then those core network elements have to help out a little bit. They have to receive the query, the inquiry from the messaging server that has the full number, hey, core network elements, is this phone on, can you tell me

where it is? They have to receive it, they're going to have to deal with the mapping from that phone number to an internal identifier, they'll have to do the lookup in the database -- the databases you've heard about in this case are called the home location register, the subscriber profile system and before that the messaging LDAP -- they do the lookup, they send the information back to the messaging server.

The core network elements who have that -- all that stuff on their to-do list to get that phone connected to the other phone, the phone connected to the other networks, they're not off the hook, they still have to help out. What they don't have to do under this invention is hold onto the message and wait for the phone to come back on and try again, that's up to the messaging server to do. The messaging server holds it away from them until it's notified that the phone is back on.

So that's the invention and that's what Dr. Akl explained to you.

Now, you heard from Dr. Akl yesterday and he said -- he gave you a piece of good news, he said Sprint isn't disputing what I have checkmarked up here, they're not disputing that this recipe is followed. They're disputing one and only one thing and that's whether Sprint's messaging servers are core network elements of Sprint's cellular

network, that is the sole infringement issue that you are being asked to decide. Why? Because over the course of that what was Dr. Akl's admittedly very long testimony he walked through all of the different scenarios for these various different steps of the claim, he walked through and he showed you how those steps are performed in Sprint's cellular network. He showed you that it was true all of those steps are performed every single time over the damages period in this case, every single time a Sprint subscriber sends a text message or an MMS message to another Sprint subscriber. He showed you that it happens every single time when a Sprint subscriber sends a text message to another network; to a Verizon subscriber, to a T-Mobile subscriber, to an AT&T subscriber, he showed you that it happens every time. By it I mean every one of these steps. He showed you it over the course of what was very long testimony and he showed you the reverse is true, it happens every time a message comes in from the other network into the Sprint subscriber.

So it took a while, we have the burden of proof, as he explained to you, we had to prove it to you. And the important thing for you now in your deliberations is merely whether Sprint's messaging servers are core network elements of Sprint's cellular network, that's it, because Sprint isn't disputing the rest and we have proven it to you.

So how do you do it? How do you figure out if

Sprint's messaging servers are, in the words of the claim, "external to the cellular network"? How do you do it? You look at how the Court has defined, has construed cellular network. Ladies and gentlemen, this is a definition of cellular network under this patent. I said that to you in opening and I'm saying it again. The purpose of a construction is to provide a definition under a patent. No, it's not called a claim definition, it's called claim construction. That list that you have in Tab 2 of your binder is claim constructions. Why is it called that? It's because it's a definition that applies under this patent, this and only this is the definition that you apply in determining the infringement issue in this case.

Under this patent the Court has told us what a cellular network is and by doing that the Court has told us what a cellular network is not.

In a cellular network we have the three buckets that you know well by now. You have the phone, you have the base station systems, those are the antennas and the specialized computers attached to the antennas, and then you have core network elements. If the messaging server doesn't fit any of those three things, then Sprint's messaging servers are not internal to the network, they meet this limitation of the claim, external to the cellular network. In other words, there is no middle ground. If the network element is not,

not a core network element, it is per se internal -- did I say that right? I said that wrong.

If Sprint's messaging server is not a core network element, it is external to the cellular network, you find infringement. If Sprint's messaging server in your determination is, is a core network element, is involved in that core functionality, if you find that it is, it is a core network element, you check the box no infringement down the verdict sheet. I submit to you though that the evidence has shown you through Dr. Akl that Sprint's messaging servers are not core network elements, and I'm going to explain that now.

I'm going to skip ahead to try to stay on my promise to you of about an hour. So this is Dr. Akl's testimony and what he says is you look at the functionality. And what is core network functionality? He says it's the switching, the lookup that you have to do in the cellular network to connect the phones to the other phones and to the outside networks like the land lines and the Internet. What is the brains behind that delivery?

And he came up with a very useful analogy, one of the only useful analogies I've heard in this whole case and one of the only analogies I haven't heard attacked in this whole case, and that's the switchboard operator because it gives you that sense of, oh, okay, that makes sense. If you don't have -- in the '50s, if you didn't have those

switchboard operators sitting there, you weren't going to get your phone call through. Those switchboard operators, as Dr. Akl explained it to you, have a lookup pad, they look up for the right exchange, and then they plug in their wires and they're making the connection, they're connecting the phone at the house to other phones. That's what a core network element of a cellular network is, that's what it does. It's about connecting the phone to other phones and to other networks, that's what it is, that's what Dr. Akl is telling you. You look at functionality and this is the functionality you're looking for.

And so where did the functionality come from? It came from a number of places. It came from the patent, the patent talks about the MMSC. That's the messaging server, one of the messaging server described in the patent, the MMSC. He says you look at that functionality and it talks about how you can implement it programably where you want to implement it.

And then it's in the Court's construction. You look at the functionality, what is the functionality of a messaging server? It's the storing and forwarding -- you've seen this before -- the storing and forwarding and the sending an inquiry. Where is that functionality? Is that functionality in the computers that are connecting the phone to other phones and other networks or is it separated from

them?

And then Dr. Akl went through the standards and he said, look, it makes sense to look at the standards. Why? Well, Sprint's network is a CDMA 2000 network. And so when you want to figure out how a CDMA 2000 network works, you look at the standards. This is what Mr. Lanning did too -- we disagree with how he did it and I'll explain that to you, but you look to the standards, okay? And even in the standard it talks about these things being functions. Again, these things shown in this box are not computers, they're not things, they're functions. And the standard, as we showed you during the examination of Dr. Akl, these functions can be implemented virtually in any way you want. It's a grab bag, you put them anywhere you want. If you want to take all these functions and put them in the elements that are doing the connecting, you can do that, the standard doesn't care. The standard is saying these are functions that you may want to include in your cellular network, it's functions. This is why Dr. Akl is focused on functionality.

And Mr. Lipford, Sprint's director of standards testified, this is one of Sprint's many fact witnesses they paraded in here, he even testified that he agreed that DX-3, that's this figure we're looking at, is laying out the functions that may comprise a cellular network, he agrees, the director of standards.

Okay. So now what I'm going to do is explain to you how Dr. Akl figured out what Sprint's core network was in the first place. Okay? So he didn't just look at Sprint's messaging servers and tell you the messaging servers are not, he first figured out what Sprint's core network was made of. Okay?

And I wrote -- this is Dr. Akl's slide, the snow cone slide that you've seen, and I wrote on there the word "undisputed," because everything that he has listed in there as a core network element is not disputed in this case.

Now, I could stop there and just say it's not disputed, but the reason I'm going to show you what Dr. Akl is telling you is because I'm hesitant on why it's not disputed. I didn't hear Mr. Lanning talk about why he doesn't dispute any of these, because he didn't show you any analysis in his seven-holistic-factor analysis, he didn't walk through these things and tell you why they are core network elements under that, he just said that they are.

So I think it's important for you to know how Dr. Akl approached it. He looked at the mobile switching center and he said their core -- actually he looked at the mobile switching center and the package switching nodes, both of which are described in the patent and shown in the first two figures of the patent. And he said they're core, they're core, they're essential because they are making the decisions

of how to connect the phones in a cellular network to the other phones, to the land lines and to the Internet, they're involved in getting the phone connected to other phones in other networks.

And Mr. Lanning says you can't do a lot of things if you don't have the MSC. In fact, you can't do that core functionality if you have the MSC. Those are my words. What he said was the phone can't do a bunch of things, it cannot connect to the PSTN, it cannot make calls to other mobiles and it cannot send or receive short messages. I'll submit to you it also -- well, I'll leave it at that. It can't do the functions of getting the phone to talk to other phones, to other networks. That's a core function, that's why the MSC, the mobile switching center, is a core network element.

Home location register, same analysis from Dr. Akl. Without the home location register, the cellular network doesn't know where the phone is. That's a pretty important piece of information to connect up the phone to other networks. Cell networks, the whole purpose obviously is for us to be able to move around and still get our phone calls, somebody has to keep track of that. What keeps track of that? Well, that is stored in the home location register. You need to know where the phone is to connect it up to other phones or other networks. Must know, core network.

Subscriber profile system, same thing. This is

storing the information that is used to connect that phone to the Internet, to connect that phone for voice-over IP calls. Without the SPS, you can't do that, Mr. Lanning admitted that. That's core functionality in the core network. Undisputed, but I think it's important to walk through and explain to you what Dr. Akl's analysis is.

So now we get to the messaging server and there's a difference. And I have a long quote up here about the messaging server from Dr. Akl and he repeated this in various forms a number of times. Suffice to say, ladies and gentlemen, the reason that Dr. Akl concluded that the messaging server is not a core network element of Sprint's cellular network is because it is not involved in connecting that phone to other phones or to other networks.

So what happens if you don't have it? We've heard this from Mr. Lanning and from Dr. Akl. You can't do messaging, you can't do messaging. That's a service. If you don't have a voice mail system, you can't have voice mail. That's a service, it's messaging, important to Sprint for sure, important to their bottom line. You saw the numbers, 2.66 trillion, trillion SMS messages over the damages period. That's an important service to Sprint, it's one of their core services, but it's not involved in connecting the phone to other phones or other networks. Dr. Akl explained that to you, that functionality of the messaging server, storing and

forwarding and querying databases, is not also involved in connecting the phone to other phones or other networks. Not a core network element, it's that simple. It is not a core network element that makes it external to Sprint's cellular network, that means you check the box infringed. Claim 1, infringed; Claim 7, infringed; Claim 113, infringed.

So I want to go to what Sprint said in its opening statement and then talk about what Mr. Lanning -- this is Mr. Lanning's slide, that's Sprint's technical expert, and I think this is important. In Sprint's opening statement Sprint's attorney said that the messaging server actually figures out whether I'm set up to receive text messages from my wife, where I am and how that message can get to me, and then what the messaging server does is it routes my wife's text message to me. That sounds like a really smart device, that sounds like it's connecting the phone to other phones and to other networks, and that's not true.

This is Mr. Lanning's slide and that's my handwriting on there, I'm a little embarrassed by it, but it is what it is, and you can see in the bottom part it says storing and forwarding of text messages. Storing and forward text messages is the last one on the list. That's in the Court's claim construction. Everyone agrees in this case that Sprint's messaging servers do that, they store and forward; that's not connecting the phone to other phones and

other networks. Okay? Also in the claims construction is querying, querying subscriber databases, that's in the Court's construction. Those are the two functions of a messaging server, that's not connecting the phone to other phones and to other networks.

Now let's look at the rest of this list and see if it holds water. Receive text messages. Mr. Lanning agreed, as he had to, on cross-examination that if something is storing something, of course it received it first. You can't put something in your attic if you didn't have it in your house in the first place. So that's not adding anything to what a messaging server does; it's implicit, in the words of Mr. Lanning.

The next one down, we did querying, now we have screening and blocking. That makes it sound like this messaging server has a lot of brains and it's doing a lot of sorting out of information, that's not true. What the messaging server does, you heard it, you saw it through Dr. Akl's testimony and Dr. Dwoskin. Dr. Dwoskin testified about what's going on in the particular database, the SPS and messaging LDAP. Those core network elements are doing the figuring out, they figure out because they have it in the database, they're the ones figuring out is this subscriber allowed to receive this text message, is this subscriber allowed to send this MMS message? That's the subscriber

profile system, that's the messaging LDAP, the figuring out the location, that's the home location register. All the messaging server does is sends an inquiry for information about the phone and it gets back all that information. It doesn't do any determining of these things, it's just sending out a question and responding.

And I thought Dr. Akl's testimony in this was interesting. He said, what's more important, the thing that has the information or the thing that's asking for the information? The thing that has the information, the SPS, the messaging LDAP, the home location register, they have that information because they're using it for services and they're using it to connect the phone to other phones and other networks. That's core functionality, that is not in the messaging server. If the messaging server already had the information, it wouldn't need to send a query in the first place. It's just a service, it's an add-on service to Sprint's network that happens to involve a computer called a short message service center, a multimedia service center. That's a computer and what does that computer do? Stores and forwards and sends queries.

And then the last one I haven't touched on is routing and I'm going to talk about routing, because that sounds like it's very sophisticated and brainy, like decision-making must be happening; it's not true. Mr.

Lanning even admitted on the forwarding part of storing and forwarding, the messaging server only has two options: it's either told by the SPS send it out, send it to the inter-carrier gateway, because the recipient is not a Sprint subscriber, send it there if it's not a Sprint subscriber, that's one option, the other option is send it to the mobile switching center if it is a Sprint subscriber. It is told that by the HLR. The HLR, home location register, stores the information about where the phone is, the messaging server receives that information, it says right in there, send this to MSC named Bob, and the messaging server receives that and it just does as it's told. It doesn't make decisions, it does what it's told and it does based on the information that it is provided that it doesn't have, information by the way that's in the cellular network that is used by the cellular network for other things.

So this slide is intended to dovetail with this opening statement about the messaging server and the messaging server being able to find out where I am and how I get my messages and do routing, it's not true, it's not true. And this slide intended to make it look like this messaging server is performing core functions, it's just not true. And Mr. Lanning, this is Mr. Lanning's words on my cross-examination, these are his words, not mine, and he admitted it, he admitted what I have handwritten on this document,

what I just walked through.

Okay. So now I have shown you the basis for Dr. Akl's opinion of how Sprint's messaging servers are not core to Sprint's cellular network. Let's be very clear about terminology, we're going to hear -- I already can feel it, we're going to hear that word "core" coming around a lot. You're going to get a parade of the fact witness testimony from Sprint's witnesses in Sprint's opposition to my opening right after -- closing right after I'm done here, you're going to hear it. Core to what is the question. I had flagged this in my opening and I'm flagging it again now, core to what?

The Court's construction requires that a cellular network have core network elements, those are core to the cellular network; not core to Sprint's business, not core to any other network, not core to messaging. The question is are messaging servers core to Sprint's cellular network, that's the question that needs to get answered. Dr. Akl said no because Sprint's messaging servers are not involved in that core function of phone to other phone, connecting phone to other network. Not involved, not core, it's that simple.

What does Sprint say? I want to start off by talking about kind of like where these holistic factors came from, because I don't know exactly what you heard during the testimony, but these holistic factors, there are seven of

them, they are Mr. Lanning's. This is just one, Dr. Akl showed you a different set of testimony yesterday consistent with this one. Mr. Lanning said that in response to my cross-examination in front of you.

My question was, "Okay, this seven-factor holistic analysis that you came up with, you came up with that for the purposes of this litigation?" You came up with that for purposes of this litigation, that's my question to Mr. Lanning. And he responded, "That's right, based on my over 30 years of experience of how you determine whether something is inside a cellular network or not." This is Mr. Lanning's holistic analysis.

And I think that it's poignant for you to think about, if you can remember, whether you heard about this seven factors during Mr. Lanning's direct examination. Now, I'll submit to you, I went back and read it, they're in there, they're in there, but they're not pulled apart like this. And these are the factors that Mr. Lanning applied in trying to determine if Sprint's messaging servers are core network elements.

Why is that significant? Because the way Mr. Lanning presented his direct testimony to you, it wasn't pieced together like this, it wasn't -- actually, I should say it wasn't kind of pulled apart like this where you could analyze what are the pieces of evidence he's relying on, what

are the factors he's applying, it wasn't pulled apart like that, it was smooshed together and it was buried in there what he was actually saying.

And so I think by pulling it apart and looking at these factors individually you see and I'm going to show you very quickly, I promise you, very quickly because -- I'm going to show it to you quickly because Dr. Akl walked through it with you yesterday and I don't want to be completely persona non grata, so I'm going to go through them quickly. But when you pull them apart and look at the individual factors that he said he applied and if they don't cut either way, then smooshing them together doesn't get them to cut either way either. Just because they're smooshed together doesn't make it somehow better analysis than when you pull it apart and you look at the seven factors that he said he analyzed; that's why it's important to pull it apart and to look at it.

Factor number one was the patent and the claim construction. The patent doesn't cut one way or the other. How do you know that? Because even Mr. Lanning agrees that the patent applies equally to CDMA 2000 networks like Sprint's or to GSM networks. It doesn't cut one way or the other.

Holistic characteristic number two, the standards. I broke this up into two parts the way Dr. Akl did yesterday

starting with the MMS standards. The MMS standards say may and Mr. Lanning admits, "So the standards then here at least for MMS is agnostic in your analysis of whether an MMSC is a core network element or not, the standard isn't recommending one way or the other?" He says, "That's correct."

What does that mean? Looking at the MMS standard doesn't help you determine, even though Sprint is implementing this standard, it doesn't help you determine one way or the other whether Sprint's messaging networks are core network elements or not, it doesn't cut one way or the other.

Now, we get into a bit of a mess when we go to the other standard, the -- this is the ANSI standard, DX-3, that you have seen numerous times. The plain-language wording of this figure says "may comprise." These functions that are shown in this box, what the standard is saying is these are functions you may include in a cellular network. That, ladies and gentlemen, is not a recommendation, it doesn't cut one way or the other.

And I spent a little while on this with Mr. Lanning to try to just nail down what he's saying. There's a saying one of my colleagues uses who has been taking testimony in this case, he calls it nailing jelly to the wall, that's like nailing jelly to the wall. Picture trying to nail jelly to the wall, that's what I felt like trying to understand what Mr. Lanning was saying when it came down to whether when a

skilled artisan reads this standard and sees that this standard is saying that a cellular network may logically comprise, would a skilled artisan read that as a recommendation and I tried to get that crystalized. To me, if the answer is yes, the answer to the question is yes, it's very simple. If the answer is no, the answer to my question is no, very simple. Instead I got a long paragraph that's very hard to pick apart and really it's about nailing jelly to the wall; I didn't do it, I couldn't do it.

So the next best thing is I went to Sprint's director of standards, and he was forthright with me and he said that the network reference model that we're looking at here is laying out the functions that may comprise a cellular network. It doesn't cut one way or the other, it doesn't inform whether Sprint's messaging servers are core network elements or not because there is no recommendation.

Okay, now I'm onto Sprint documentation, holistic factor number three. Why am I starting with Sprint witnesses? Because it's these witnesses and people like these witnesses who are writing these documents in the first place. And this is Dr. Akl's testimony about how you should take all of that fact testimony that you heard that we spent about a day on, maybe even longer than a day, how are you supposed to take that testimony from these engineers employed at Sprint for a long time who come in here and sit on that

stand and use the term core, core, core over and over and over again, how are you supposed to take that?

And I submit to you that you're not, you're not supposed to take it. You're not supposed to do word matching with what these witnesses say and the issue that you are asked to decide in this case, you don't match words. You look at the Court's claim construction and then you look at the Sprint's network and you figure out whether Sprint's messaging servers are core, core to Sprint's cellular network, are they core elements to connecting the phone to other phones or to other networks. I would submit to you, ladies and gentlemen, that you don't listen to fact witnesses who happen to throw the word core around a lot, throw it around a lot in here. You heard me on cross-examination ask them about their depositions and why wasn't it thrown around a lot during the depositions when we were talking about the same messaging network, the same components, the same infringement case.

And, ladies and gentlemen, every one of those witnesses told you they had never read the patent and they didn't review the claim construction. And the Court is going to instruct you that your job is to apply the claim in the patent, the claim construction that this Court has provided to you and compare it to Sprint's network, that is your job. You are not supposed to go and compare it to some words that

fact witnesses said on the stand, words that these fact witnesses did not use at the depositions.

And the good news is that you don't have to take my word for it, you don't have to take Dr. Akl's word for it, you can take Mr. Lanning's word for it too, Sprint's expert, and he said, "which may be the same" -- their terminology which I have underlined on the last line -- "which may be the same or different than the Court's construction." What does that mean? It's a wash, it doesn't cut one way or the other; it does not inform, it does not help you determine whether Sprint's messaging network -- Sprint's messaging servers are core network elements of Sprint's cellular network.

These are the same people writing the documents. And so if what they say on the stand in here on their interpretation of Sprint's network doesn't apply per Mr. Lanning's very words, then what they write down is no more applicable. It doesn't matter whether there are Sprint documents that refer to core network, core network elements, Sprint network, Sprint in-network, or any other adjective to describe things that are not in this case, it just doesn't matter.

So let's talk about one of the documents, this one. This is a slide from Mr. Lanning's presentation with notes that I added to it during the cross-examination of Mr. Lanning. Why is this significant? Well, it's significant

because in his direct examination what he was telling you was, do you see this box that says Sprint in-network, you know what that means? That means Sprint's core network, that's what Mr. Lanning told you. He told you, you accept -- you the jury, you accept that because this has a box on it written by somebody that says Sprint in-network, you should just accept that everything in there are core network elements of Sprint's cellular network under this patent under the Court's construction. That is what Mr. Lanning is inviting you to do just because this box says Sprint in-network.

And on cross-examination I asked him about that and at first he said, yes, everything in that box is a core network element of Sprint's network, and then he realized that was a mistake and I think it was because he knew where I was going, because he didn't know what the other boxes did, he did not investigate. That's why I put question marks next to them. He didn't know and if he doesn't know that everything in the box is a core network element of Sprint's cellular network, if he doesn't know that then he cannot know and opine and tell you that when a box says Sprint in-network it matches up to the Court's construction, it matches up to the patent, he can't do it.

And then we see that outside the box he admitted that there were core network elements of Sprint's network, we

see the mobile switching center, which Dr. Akl agrees is a core network element of Sprint's network, that's not even in the box. And they try to wash that away by telling you, well, what we're talking about here, the focus of this document is on the messaging network, which is a subcomponent of the cellular network, and that's why it doesn't have the mobile switching center in the Sprint in-network.

So now let's go to the fourth holistic factor, protocols and interfaces. Here this did not come out with a model of clarity on Mr. Lanning's direct examination, but on cross-examination he said yes, this was one of the factors he supposedly considered, again considered in deciding whether Sprint's messaging servers are core network elements of Sprint's cellular network. He looks at the protocols and interfaces. Ladies and gentlemen, as Dr. Akl explained to you, all computers talk to each other using protocols, they all have interfaces. Any computer that talks to any other computer is going to have an interface through which it talks and they're all going to speak the same language. It is no different than me speaking to you now. I am speaking English to you and you are understanding me because that's our protocol. If any of you know Chinese, I do not know Chinese, and you start speaking Chinese to me, I will not understand you. I will nod politely and smile and pretend to probably, but I will not understand you.

Computers speak protocols to each other, that's what they do. So again it doesn't cut one way or the other. And here the protocol that he's referring to is this protocol called SS7. It's just a language, you can just think of it as English, it's just a way computers talk in a cellular network, they speak English to each other. The significant admission from Mr. Lanning on this point is that interface, the SS7 -- I'm going to walk up here and point -- your Honor, can I walk up and point at the TV?

THE COURT: You can.

MR. GOETTLE: This has a 7? I'll submit to you I couldn't get him to admit this one, but I was going to talk about it. Is this asset 7 here on this interface? This is the mobile switching center that everyone agrees is a four-network element speaking English to the regular phone network, the PSPA. That's the phone network for the phone that we had hanging in our kitchen. That's the people who switched telephone network.

The mobile switching center might speak English inside the cellular network, but it's also speaking English to the PSPN. Now Mr. Lanning took issue with me putting SS7 over the PSDN, but he did admit, ladies and gentlemen, that that SS7, that same language, English, is spoken on the PSBN2. Why is that significant? It means you can't look at what language that people are speaking to decide if they're

in the same network. I say hide two people in the elevator all the time. They're not in my network of friends. It just doesn't matter. It doesn't cut one way or the other. Protocols and interfaces is a wash. It will not help you figure out whether Sprint's messaging service are core network elements of Sprint's cellular network.

Then we get to holistic characteristics 5 and 6. Who operates it and who owns it. Dr. Akl said to you, well, this one cannot be right. This cannot cut one way or the other because we own the cell phones, and the Court has instructed us that cell phones are part of the cellular network. We own the phones and yet they're part of the cellular network. Sprint doesn't own them. We own them.

And then the patent itself addresses this, and numerous times it talks about the operator of the network, Sprint for example, the operator can have the MMSC, which is one of the messaging servers in the patent can have it, and it's still talking about that messaging server being external to the cellular network, being not a core element of the cellular network. Even though it is the operator, like Sprint, owning and operating that messaging server. Doesn't cut one way or the other.

Relative physical location. Sprint's opening statement on this one. These messaging servers at Sprint are located in Sprint's most secure facility. What are those

facilities called? They're called core sites. And what else is at those core sites, these SPS databases? They're in the same building in the same facility in the same core sites as the messaging servers. I don't know. Maybe that would make sense if you don't actually drill down and look at it.

What does it matter what the placard over the door says when what your job is to do is to compare Sprint's network to the patent, Sprint's network to the core construction. Who cares what Sprint calls it? That doesn't mean that under the patent it's a core network element involved in getting the phone connected to other phones in other networks.

And then Mr. Lipford says in response to my question, does geography have anything to do with what is part of he cellular network, he answered no, unequivocally. And by the way, I forgot to mention that Mr. Byorkofsky (ph) admitted that these things that we're hearing about that are being called foresights, that at S they called them data centers. Yes they have a document or two that actually refers to them as core sites. I don't think it matters one way or another, but the common terminology Mr. Yarkosky told you to these things is data center. Data Center though doesn't advance any ball in this case so Sprint's witnesses came in and one after another talked about this core site. And what about this core site and what about this faker? I

let it go during trial, but Sprint left this figure up in front of you for long durations of trial.

And I think you could look at this figure and think, I don't know exactly what this is but we have a sidewalk going around. This look like a block. This looks like City block go , I think that that's subliminally what this might be suggesting. And this looks to me like, it's suggesting that look, look what you have on that block.j You have the home location register. You have the subscriber profile system. You have the PSDA, all core network elements on the same block.

And so the thing in the middle? That must be a core network element, too. This messaging server. Not only is it in the core network, but it's in the core of the core network. It's right dab in the middle. What is that suggesting?

And then let's look at the relative size of everything. The messaging server looks like the smartest computer there. It's the center of everything going on and it's twice the size of everything else.

It's not true, ladies and gentlemen, and Mr. Lanning invented it. The mobile switching center, the packet data support nodes, the HLRs are not at this supposed core site. They're not even at the data center.

I submit to you that it doesn't matter one way or

the other at all anyway. It doesn't matter where these things are physically located. That's not what the patent's talking about. That's not what technology talks about. But this diagram is misleading in those two respects. They're not all on the same block and the messaging server isn't the brains behind the operation at the center of the operation of everything else.

Okay. And I'll submit to you, ladies and gentlemen, that none of those core factors even mentions function -- excuse me. None of those holistic characteristics even referred to the function. And I don't think it takes a computer scientist or a skilled artisan to know that if you're trying to figure out if something is core, a core network element of the cellular network, you look at something.

All right. Now, you're going to hear about the NV&L agreement, I'm sure. I want to point out that in the jury instructions, the instructions that Judge Dubois was going to read to you, it says "As I have previously instructed you, you must accept my definition of these words in the claim as correct." What does that mean?

You, ladies and gentlemen, apply the Court's claim construction of cellular network. You apply the Court's claim construction of cellular network. You are not to apply the MV&O agreements construction of cellular network which is

flawed in ways that Dr. Akl did a nice job in summarizing yesterday, I thought. It is both overinclusive and underinclusive. Overinclusive you know because that definition includes cell towers, which is not what the Court has told us. The Court has told us that the cell towers are not part of the core network elements because he's listed them separately.

Number two, it's underinclusive because as Dr. Akl explained to you, it excludes the home location register from being part of the core network under the MVNO agreement. Overinclusive and underinclusive. But neither of those things matter. What matters is this is a business contract between two technology companies where one is essentially trying to rent the other one's network. Is that contract going to have technical terms in it? Why wouldn't it? What are we talking about here, it's all technology. Of course it's going to have technical terms in it. But what's the goal of a business contract. It's to make sure that the parties to the agreement know what they're doing in the agreement. It's got nothing to do with figuring out whether messaging servers are core network elements of a Sido (ph) network. Nothing to do with it. It is to make sure that Sprint and Comcast have a meeting of the minds, and not only just Comcast but the other parties to that agreement, too. Comcast wasn't the only one. It's to make sure they have a

meeting of the minds on what their agreement is. It's irrelevant to the analysis that you're being asked to perform, to these issues that you're being asked to address.

Okay. I'm going to move to damages, and I'm doing pretty good in terms of my commitment to you on time. And for this I have to refer to notes. You'll notice I didn't take any damages witnesses in the case. So I need to look at some notes while I walk through this. But this is actually pretty straightforward. Number one, as with everything that you're going to be asked to do in that jury deliberation room, you start with the law. We're not retreading new ground. We're not creating new things here. We're retreading old ground.

You start with the law and Judge Dubois is going to instruct you on the law. And what he's going to tell you is when you find the claims infringed, at least one of the claims and I'll submit to you that all of the claims infringe, then what you are charged to do is you figure out the damages you must award that are adequate to compensate Comcast. How do you figure that out?

Well, first of all, you figure out what a reasonable warranty is. You cannot award less, you cannot award less under the law, you cannot award less than a reasonable royalty. That's what the law says.

And how do you figure out the reasonable royalty?

You figure out what Nokia, as confusing as this is in a confusing case already, you have to look at what Nokia and Sprint would have agreed to at the time of the hypothetical negotiation. That hypothetical negotiation occurs in the imagination on the date the patent issues because that would have been the date of first infringement in the case. It's confusing; that's the law. What would Nokia and Sprint have agreed to at the time of the hypothetical negotiation, at the time that the patent issued which was in 2005.

And it's not just what they would have agreed to, but it's what they would have agreed to for the use of the invention. That use has been momentous, massive. And what are we asking for? Ladies and gentlemen, you've seen this before. We are asking for $153,634,905 for Sprint's use of the invention to the tune of 2.66 trillion accident infringement with respect to SMS and 61.5 billion accident infringement with respect to MNS.

You take that number which is not disputed in this case. We don't even have to decide whether those numbers are right; they're not disputed. And you multiply that by a little bit for SMS, a little bit more than five one-thousandths of a penny. For MMS it's a little bit more than six one-thousandths of a penny per message.

Now Sprint, the evidence showed you in this case, Sprint at times during -- I told you in my opening it was

Sprint at times had earned 15 cents per message. What I learned during the actual testimony during this case was that Sprint at times had earned 20 cents per message.

And what we are asking you for in our reasonable royalty that Ms. Riley and Mr. Webber explained to you, what we're asking for is a sliver of one penny. Five or six one-thousandths of a penny. And how did they get there?

You know what, before I get you focused on that side I'm going to flip back and talk about what I heard in opening and what I heard on Dr. Cox's examination. Dr. Cox was Sprint's damages expert.

In opening I heard that Ms. Riley ignored the purchase price, the price that Comcast paid to Nokia in 2010, not 2005, in 2010 for the patent. Comcast paid $600,000 for the patent that you heard about in this case, two other US patents and then a related foreign patent, $600,000. And in Sprint's view that is the starting point. That is the kernel around which their damages case melts.

Ladies and gentlemen, that's not for the use of the invention. That doesn't count. But Ms. Riley did talk to you about it. She explained why. And her explanation is very, very logical. She's saying it doesn't matter in the damages calculation under the law to figure out Sprint's use made of the invention. Why? Because the hypothetical negotiation is this legal fiction. And at that hypothetical

negotiation you make assumptions -- you are required to make assumptions that you don't make in the real world that Comcast -- that did not apply when Comcast bought the patent from sprint.

What are those assumptions that you have to make at the hypothetical negotiation.

Number one, Sprint is infringing the patent. When Sprint and Nokia are in that hypothetical negotiation in 2005, number one, Sprint is infringing. They're not saying they don't infringe, they're not saying they might not infringe, they have the parties agree that Sprint is infringing. Sprint is infringing what? A valid patent. That is two assumptions at the hypothetical negotiation that do not apply to the actual negotiation between Comcast and Nokia when Comcast bought the patent in 2010. Those are two of the assumptions.

And Sprint at that time of he hypothetical negotiation, knowing it's infringing a patent, knowing that a patent is valid it also knows it needs to keep infringing. It needs the license to stop infringing. It's not going to stop doing the messaging altogether. What is what Sprint would pay for its use going forward for using that invention? That's also a factor that does not apply to the Comcast Nokia negotiations in 2010. Why not?

We heard it in this case. Sprint brought it out a

lot. Comcast doesn't practice this patent. It didn't need this patent. It didn't apply to Comcast's business. I explained to you why we got the patent. We got it for defensive purposes.

Different scenario, Ms. Riley determined that the purchase price of this patent is irrelevant in her analysis.

And then the last thing we've learned about was Nokia's financial position. 2005? Very strong. 2010? A varying platform. And jumping off a varying platform was what we heard from Ms. Riley yesterday about what was going on with Nokia at the time that Comcast bought this patent. Why? The I-phone had been released. Android operating system had been released by Google. Chinese manufacturer, Samsung was putting the Android operating system on its phones. Competition was stiff and Nokia couldn't compete. Why not? They didn't have a smart phone. They didn't have an answer to it. And that's that burning platform. That all came out in that burning platform's article that we heard about that the CEO of Nokia gave this speech to Nokia employees and it got picked up by the Wall Street Journal. I mean that's a remarkable speech to be seen about a company that when the brand-new CEO comes in and says "We're burning, guys. We got a choice. We stay on this burning platform or we jump into the icy water and see what happens." I didn't quite understand the analogy completely. It sounds like he

jumped into the icy waters and survived. But the point is Nokia was hurting in 2010 when Comcast bought the patent. That's what the evidence in this case showed. So different scenario which is why Ms. Riley did not find that the purchase of the patent the circumstances of Comcast's purchase of the patent match or were relevant to the hypothetical negotiation back in 2005.

Okay. Then the next thing I heard about -- oh. Then Dr. Cox, Sprint's damages expert tells you at that hypothetical negotiation the parties would have agreed to a lump sum payment of $1.5 million. That's what Dr. Cox is telling you the buyers wouldn't agree to in 2005.

What I heard him say about 5 or 6 times doesn't fit with what I've been hearing about core network elements from all of those fact witnesses you heard about, you heard from. What I heard from Dr. Cox was he said it a number of times that hey, at that time in 2005 Sprint would not have agreed to a running royalty to an ongoing royalty. Why not? Because there was a lot of uncertainty about messaging. It could have been obsolete in a day. It could have been obsolete in a year. The parties didn't know.

Ladies and gentlemen, core network elements that connect the phone of a cellular network to other networks and to other phones don't become obsolete. If messaging -- in fact the hypothetical negotiation had put it then that

messaging would become obsolete, it's a very good indication that it's not a core network element of a cellular network. It's a service. And what Dr. Cox was saying is, this service might be obsolete. That was an unknown at the hypothetical negotiation. So the parties would have agreed to 1.5 million. That doesn't make sense for that reason alone, but it doesn't make sense for another reason. Why not agree to five one-thousandths at the hypothetical negotiation if you're concerned with the servers becoming obsolete in a day, in a year, in two years, why not just agree to one, five one-thousandths of a penny.

If it's not going to amount to much because it might become obsolete, why agree to pay $1.5 million if the next day it could be that SMS is gone and new technology comes in. And I'll submit to you, ladies and gentlemen, that $1.5 million, this lump sum payment, does not compensate, would not compensate Comcast for Sprint's use made of the invention. That use again to the tune of 2.66 trillion SMS messages and billions of MMS messages.

And then Ms. Riley, Sprint's damages case also attacked Ms. Riley with how she allocated the messaging revenue from the other revenue.

So the issue here is that Sprint bundles got to the point, I forget what year, got to the point where they were bundling their plans. Right? So customers are paying

revenue to Sprint, paying for their bill to Sprint but it's for a bundled plan. And so what Ms. Riley had to do was dissect out what revenue accounted for messaging versus voice.

And so how did she go about doing that? Well, she relied on the very same documents that Sprint generates for tax purposes. What's wrong with that? Dr. Cox says that's not right, that those are the very same documents that Sprint uses when it pays its taxes. When Sprint pays its taxes it dissects out messaging revenue from the other revenue. If it's good enough for the Government, I think it's good enough for this Court for Ms. Riley's determination. It's reliable because that's what Sprint is telling the Government.

And then we get to the spectrum. The spectrum -- the spectrum costs. And the issue that Dr. Cox raises, holy cow, that spectrum was really expensive. And Comcast's damages case didn't take it into account. But, ladies and gentlemen, they didn't take it into account in the damages case because it is not a cost. It is an asset. And not only is it an asset, it is a rare asset that doesn't depreciate, that requires no amortization. It has the same value that it had when it was born. It wasn't accounted for by Sprint to the SEC, to investors, to Wall Street as a cost. And that's why Ms. Riley did not include it in her damages calculation. It is an asset. That's what Sprint tells the world,

including what Sprint tells Ms. Riley when she's figuring out would that be reasonable royalty damages in this case.

And then we get the network costs. There was criticism of Ms. Riley about network costs. So again what Ms. Riley did was she figured out what is Sprint's overall profitability. Profit is equal to Sprint's revenue minus Sprint's costs. What is Sprint's profit?

Ms. Riley determined that Sprint's profit for the cellular network, voice, whatever, for the cellular network was 23 percent. And she put that aside. She took it out of her damages calculation, that profit. Sprint got all that profit. And then she said, putting that aside, what is Sprint's profit for messaging? She figured out that profit and that's the profit that she applied her damages unto. She took out all of the infrastructure costs. It's already included in the 23 percent. Cost of the cell towers, for example. She took it all out and she was left with the messaging profit and she applied the damages, the reasonable royalty rate that she came up with, she applied it to that percentage for messaging.

And she relied on Mr. Webber who determined that the costs involved with just messaging was $1.112 billion for just messaging. So she figured out what the profit was from the revenue minus that 1.112 billion, that's the profit from which she determined the reasonable royalty.

And why did she do that? Because she said all of the rest is profitable. We saw the study, the FCC study that said in messaging, the profit margin for messaging is like upwards of 90 percent. And her profit margin was lower than that. I think she was at -- I actually forgot to write it down and I'm a little bit embarrassed, but I think it was down to, I want to say 53 percent I think it was. And she explained the whole free rider principle.

And just to make sure this is abundantly clear, what's going on here, where messaging, text messaging came from, and Dr. Akl explained this, is when my phone -- my phone has been sitting here on this podium and I haven't been talking on it. But it's been talking. It's been communicating with the cellular tower nearby on what are called control towers. There are signals going from my phone to the tower and back to my phone. Dr. Akl explained this to you. Those are called control channel signals. Those signals happen all the time. That's how the network can check where the phone is. Hello, where are you? The phone responds. Control channel signals when I'm not talking on the phone. Those signals happen all the time. They have to happen. That's how the cell network tracks the phone.

What text messaging is, it's a free rider on those waves going out to the towers, it's a free rider. It hopes onto that control channel signal that's already being sent.

And it's a free rider to the towers. That what this free rider analysis has been all about. There was no cost involved in putting the messages on there. No additional costs, no additional infrastructure, no additional towers. Why? Because it free rides on what's already going on inside the cellular network. And Ms. Riley explained that that's how she took that into account in coming up with her profits analysis.

Okay. I'm almost done. Ladies and gentlemen, you're going to receive the verdict sheet. This is what you fill out when you do your deliberations and finalize your deliberations. And I thought I would be remiss not to just show you what to do.

Okay, thank you. Can we go to the next page?

First question you're going to be asked about infringement. And you check yes if you find infringement and you check no if you find no infringement. Again, your sole issue there is to determine whether Sprint's messaging servers are core network elements of Sprint's cellular market plan.

Then if you check yes to that, then you move on to Sprint's invalidity case. And you determine whether the claims have been proven by clear and convincing evidence, and I'll talk about that in rebuttal, have been proven by clear nd convincing evidence to be valid or invalid. And you check

the appropriate boxes. For anticipation, that's one reference teaching all the limitations or obviousness, that's a combination of prior art. Teaching the limitations, you check yes or no based on how you see the evidence. If there are infringed claims that you find valid, then you move on o damages.

Question Four Is the Amount that you find damages for. You write in the amount on that line. That's question number four, the question at the top of the screen.

And then question number five is asking you a question about the number that you just rendered And you're being asked to check one of the two selections there. Just one of the two or you might have to go back and do it again if it's not clear.

So you either check for the total sum of an ongoing royalty for messages sent, received through September 30th, 2016. And I want to take just a moment to explain what that means. This is Ms. Riley's theory, that the sum -- if you put a sum up here along the lies based on what Ms. Riley told you and again it is in your discretion. What we're telling you what reasonable royalty is for their use, for Sprint's use made of the invention is $153 million and a little bit more. You put that number up here. Or if you put what number you think is right, that is in your discretion to put up there.

This question is asking you what are you basing it on. Okay? This total sum with an ongoing royalty for messages. And hat I want to make abundantly clear because terminology here I think is a little bit confusing, even when you put a whole number up here, you'd still check this box, even though it's talking about an ongoing royalty. And the reason I want to flag that is the next one down says a one-time lump sum royalty to the life of the patent. This lump sum royalty, that's Dr. Cox's theory. That;s a one-time payment for the life of the patent. Okay? What we are asking for what we think is reasonable, what we think you should award whatever should you find their claims infringe and not invalid in other words, and valid is an award of damages through September 30th 2016. What is that date from? Ms. Riley said this a few times through which we received revenue numbers from Sprint, messaging number from Spin. Up though September 30th, 2016. Thy stopped giving us information at that point. I'm not saying they did anything wrong, but that was the last date that we got information from them.

So I just want to make sure there's no confusion about how to check these boxes. This ongoing royalty for messages still applies even if you give one number up here. In other words, giving one number up here doesn't mean that well, that must be a lump sum because it's one lump sum.

It's not a lump sum within the meaning of the verdict form. I just don't know if I'm being clear on this. But again, one time lump sum royalty, that's for the life of the patent, that's Dr. Cox's theory.

Ms. Riley's theory is whatever this number is, that would be based on an ongoing royalty. That's her theory. That's her reasonable royalty calculation based on five one-thousandths of a penny times the number of messages sent. Okay?

I thank you for the time and I look forward to talking to you again in rebuttal.

THE COURT: Thank you, Mr. Goettle.

MR. FINKELSON: May I suggest a walkabout, your Honor?

THE COURT: No, I think we'll have a recess. We'll not do the walkabout or the standup, we'll have a recess.

It's not quite 20 after. We'll recess for 10 minutes.

(Jury exists the courtroom at 11:18 a.m.)

THE COURT: You may go about your business.

(Court in recess 11:18 to 11:33 o'clock a.m.)

THE DEPUTY CLERK: All rise.

(Jury enters.)

THE COURT: Be seated, everyone. Mr. Finkelson, you may proceed.

MR. FINKELSON: Thank you very much, your Honor.

MR. GOETTLE: Your Honor, would you mind if I stood over there?

THE COURT: Absolutely not, you can position yourself so that you can see the exhibits.

MR. GOETTLE: Thank you.

MR. FINKELSON: Good morning, inside, not outside. That's where we started together almost three weeks ago and that's where this case ends today. Sprint's messaging servers are inside of Sprint's cellular network, not outside as the '870 Patent requires. As I told you when we first talked to one another, inside equals no infringement.

And it's not just that some of the evidence has shown you that. It's not just that most of the evidence shown you that. It's overwhelming weight of the evidence in this case has shown you that Sprint's messaging servers are inside of the cellular network. And for that reason, Comcast cannot prevail.

Now, ladies and gentlemen, Mr. Goettle said it and I say it in a similarly heartfelt way. We thank you for your service. Our team thanks you for your service. Their team thanks you for your service. We know we pulled you away from your jobs and your families and your daily lives and brought you into ours. I think you've gotten a taste of now not interesting that is, but we know it's an imposition and we

really appreciate it and we do appreciate your attentiveness throughout the course of the trial. You've been listening to us and we appreciate.

Let me begin today with some important things that everybody agrees upon. First, each of the claims of the '870 Patent requires that the messaging server be external to the cellular network. Nobody disagrees about that. Everyone also agrees that the Court's definition of cellular network, the one that's in your binders, says that a messaging server does not have to be external. It does not have to be external. Instead, it can be part of a cellular network. In fact, a messaging server is one of the specific pieces of equipment that Judge Dubois has already told you may be a core network element.

Finally, nobody disagrees that if you, the jury, conclude that from 2006 to the present, Sprint has installed its messaging servers inside the core network of Sprint's cellular network, then Claim 1 is not infringed, Claim 7 is not infringed, Claim 113 is not infringed and your job is done.

Comcast and Dr. Akl acknowledge that as well. Here is Dr. Akl's testimony. He agrees if Sprint's messaging servers are inside, there's no infringement. Now, Comcast showed you the verdict sheet that you'll be filling out in your deliberations. Here it is, here it is. And the very

first question for you to decide when you go back into the deliberation room and we also think it should be the last, is did Comcast prove by a preponderance of the evidence, that Sprint has infringed any of the following claims of the '870 Patent by providing SMS and MMS messaging through messaging servers other than Syniverse Picture Mail. That's question number one. And the answer, we submit to you to question number one, for Claim 1, for Claim 7 and Claim 113 is no. Is no.

Now, after more than two weeks of evidence, how do you know that the answer to question number on infringement is no? How do you know that Sprint's messaging servers are inside of the cellular network and not outside? Well, you know, because everybody including Dr. Akl, agrees that Sprint's cellular network is an American Standards style network, ANSI-41, CDMA 2000. You also know, because you've seen that in an American style network like Sprint's, the American Standards recommend that the messaging server for SMS messaging be inside the core network of the operator's cellular network. And for MMS messaging, those standards say that the MMS messaging server can be inside the core network of the operator or they can be made external. How? By using a third party provider. That's what the standards say.

And you also know because you have listened to the Sprint witnesses and you have looked at Sprint's design

documents that tell you, in line with that the standards recommend, that Sprint has put it's SMS messaging servers inside the core of its cellular network and it's done so for its MMS messaging servers, as well, ever since it moved away from Syniverse Picture Mail. That's what you already know.

Let's talk about standards. There are two witnesses in this case who were actually involved in the American Standards. One is Mr. Lipford for Sprint and one is Mr. Lanning. Dr. Akl has never been involved in any ANSI-41 CDMA 2000 standards finding. Never. So, what do the folks who have been involved, what did they testify about? What did they tell you that the American Standards say for SMS? On your screens, ladies and gentlemen, is DX-4. You only see DX-4 when I bring it up. Dr. Akl never brought it up. I think I saw it once in his 248 slides and I didn't see it today in Comcast's presentation.

This is the CDMA 2000 standard, a network reference model from December of 1999. And it says exactly what I said to you in my opening statement. It provides a recommendation. How do we know that? Because it tells us its own purpose and scope is to recommend the network reference model. It recommends it. What does it recommend? You have it up on your screens right now. That is the collective entity that dotted-line box in the 1999 standards. That's the collective entity. What's in the collective

entity? Well, for starters, the MC, that's the messaging server, that's the message center for SMS messaging. Well, there's the definition, an entity that stores and forwards short messages. That's what the standards say.

What else is in the same collective entity with the message center? The mobile switching center, MSC. The HLR and the packet switching nodes, the PDSN. Now, Mr. Lipford, who is actually responsible for this network reference model as it evolved, he testified to you that collective entity, as used in the standard, means core network. You heard Comcast cite to Mr. Lipford as an authority on the standards. You heard Comcast tell you standards are important and the first place you look. Well, Mr. Lipford was involved in the standards and what he told you was that in his experience, working in the standards group, collective and core were used interchangeably. Collective entity means core network and that's uncontradicted by any witness in this case. Both Mr. Lipford and Mr. Lanning explained, just as I said to you during my opening statement, that an American Standards type network like Sprint's, the messaging server is recommended to be inside the core of the carrier's cellular network.

Now, why did Dr. Akl never talk about the 1999 standard except when I asked him? Because he testified to you yesterday, that he doesn't even know what collective entity means in the standard. To him, he testified to you,

to him that in this formal standards document that governs how networks are built, the collective entity is just some dotted lines and boxes. He testified he has no basis to contradict Mr. Lipford's testimony, because Dr. Akl wasn't there in the standards group. He doesn't take part.

Well, today, Comcast told you that the ANSI standards are a bit of a mess. They're only a mess for Comcast. They're only a mess for Comcast because that they say what Comcast doesn't want you to hear. This is the core network that the American Standard from 1999 recommends. Mr. Lipford and Mr. Lanning, they do know what collective entity means and everything in the Court's definition of core network elements is smack dab inside the collective entity, inside the recommended core of the American Standards, including the messaging server for SMS. And this is the foundation, on which the evidence has shown you, Sprint's network has been built.

So, what about MMS, what do the MMS standards say, what have you heard? Well, both Mr. Lipford and Mr. Lanning explained that for MMS, the standard states and this is -- the document on the screen is DX-8. You heard testimony that this was offered in part by folks at Sprint, who are actively involved in developing the standards. And the standard states that the messaging server for MMS can be put within the core network of the operator's cellular network or it can

be put external to the cellular network by having a third party own, operate and host the messaging server outside. That third-party hosted scenario is designated in blue on the slide on your screen. It says third-party provider, third party service provider. Mr. Lanning referred to it as a service bureau model. And you will recognize it as the Syniverse Picture Mail model that Sprint used to follow.

But as the Judge has told you, you are not being asked to decide whether those Syniverse Picture Mail servers infringe the '870 Patent and the verdict form that you have also makes that clear you're not being asked to decide that question. You're being asked to decide on Sprint's current implementation of MMS since 2014, the implementation that is shown on your screens in orange.

So, let's talk some more about how Sprint has actually set its cellular network. What has the evidence showed you and as you go through it, ask yourselves whether Sprint's implementation is consistent with what the standards have said. For SMS, you heard the answer from numerous fact witnesses, but Patrick Wilson, who was formerly the head of MMS and SMS at Sprint, he summed it up nicely. Here's his testimony on your screens. From the time I started to work on SMS servers to the time I transitioned over that responsibility to Mr. Hoelzle, the SMS servers have always been part of Sprint's core network. And Mr. Hoelzle who then

took over for Mr. Wilson, explained that the same has remained true during his tenure. That's what the fact witnesses told you.

And Sprint's formal technical documents, it's design documents, they tell you the same thing. Inside, not outside. Let's go through a few of them together. On your screen is DX-209. This is a formal Sprint design document and you know that because it says design document up in the corner. What does this design document show? It gives us a picture of a network architecture. What's in that network architecture? There is a CDMA core, a CDMA core, that's the core to Sprint's CDMA cellular network. These are some of the elements the testimony shows that are part of that CDMA core and it's in a Sprint formal design document. What's in there? The mobile switching center, the short message service center. That's the messaging server for SMS and the HLR. All in the CDMA core.

Mr. Lanning showed you this slide. It shows how each of the elements listed there in the CDMA core and Sprint's design document, they're all in the CDMA 2000 collective entity as that evolved over time. You see each of those colored boxes right in the dotted-line box in the collective entity. You also see how IS-41, it's a little hard to see and that's what highlighted there coming out of the SMSC. What's IS-41 in the sea of acronyms that you've

heard in this case? It's the same thing as ANSI-41. This is a reference back to the 1999 -- I'm sorry, to the 1997 ANSI-41 standards in Sprint's design documents.

Also in evidence for you to take back is DX-210, this is another Sprint design document. Can we go to page 44, can you blow that up? Another Sprint design document, you heard Comcast counsel, what is core used to refer to in Sprint's document? Check to see if it's saying core to Sprint's cellular network. Sprint's CDMA core network. It's cellular network, what does it have in it? A mobile switching center, an HLR and an SMSC, all in the box labeled CDMA core network.

Sprint's formal design documents also show that SMS and MMS messaging servers are located in what are called core sites with the SPS. You'll remember this, this is the core site map and the messaging equipment is at those core sites together with the SPS that Dr. Akl says is core. How do we know that? You heard it from Mr. Golla, remember him, he's the Sprint employee responsible for the SPS and he said these are the three core sites where the SPS is located along with the messaging servers. We didn't write the word core sites in there for purposes of this case. That's in the document itself, DX-215 and you'll see it there if you look at it. In fact, Mr. Golla was challenged on that point. There was a suggestion to Mr. Golla that somehow, he and other Sprint

witnesses were just throwing around the word core site when they were talking to you. He said no, this has been there from the beginning. From 2007 SPS was installed in these core sites.

Now, Sprint's formal technical documents, its design documents, also show that its SMS messaging servers are not only physically in the same facility as the SPS, they're logically tied hand-in-hand with the SPS and with the predecessor to the SPS, which is the messaging LDAP, sometimes you've heard it as the MLDAP. How do we know that? Again, we see it in Sprint's technical documentation. You see the SPS and the SMSC located in the same spot, but also logically connected. What's this diagram called? Logical End State Diagram, it's describing logical connections, as well as physical locations.

We also have, can we pull up DX-215, Mr. Baird. We also have and you've seen this, ladies and gentlemen, a document from Nokia. This is a functional specification document that Nokia prepared for Sprint's SPS and what did Nokia have to say about where Sprint's SMS messaging servers are located? What did Nokia call them? Nokia called them internal messaging systems. Not external messaging systems, internal messaging systems. And to what internal messaging systems were they referring? Mr. Golla made that clear, as well. Nokia is referring to the SMSCs, Sprint's SMSCs that

are located at the core sites.

What other documentation do we have? We have the Sprint/Comcast contract. And folks, you know it well by now, it was entered into between Sprint and Comcast in 2008. And you're also familiar with the definitions that the parties agreed to in this contract for the core network and SMS. And you heard Mr. Dellinger, who testified to you on behalf of Comcast that definitions matter in contracts. Here is Mr. Dellinger's testimony. He said I'm not a lawyer, but I would say they matter. And these defined terms matter in the Sprint and Comcast contract, as well. Sprint short message service centers, its messaging servers for SMS are defined by Sprint and Comcast in this contract as part of Sprint's core network. Comcast's own witness, its own witness that they brought here to testify to you about this agreement, admitted that to you on the stand two days ago.

You remember Mr. Koch, he was called to the stand by Comcast. I asked him and do you agree that an SMSC is infrastructure for providing SMS. That sounds right. Do you agree that the definition of core network includes SMS infrastructure? Mr. Koch's answer was yes. Comcast raised it.

You also might remember the testimony of Mr. Kalinoski, Sprint's corporate representative who's been with us throughout the trial. He was the witness who explained to

you he has an engineering degree and had an operations and technical role on this agreement. He was told by Comcast counsel, deposition just sounded like sales. Well, Mr. Kalinoski had an operations and technical role on this agreement and here is what he told you. Why does the contract between Sprint and Comcast define core network the way it does? Why? That was reality plain and simple. The voice, data and SMS service infrastructure were all part of Sprint's core.

He also told you, as did Mr. Koch of Comcast, that Comcast had it's own team of technical advisors dedicated to getting the definition of core network technically accurate in this agreement to reflect what Sprint's core network actually is. What else did Mr. Kalinoski tell you? He told you that these are the same messaging servers, these SMS messaging servers that are in question as part of this trial. And that's the truth, they're the same messaging servers that are accused here.

You heard Comcast's counsel say that once upon a time, Sprint and Comcast were partners. Well, when we were partners, Comcast told you the truth. When we partners in this agreement, Comcast told you the truth. It admitted and agreed that the very same messaging servers that Dr. Akl now says are internal -- excuse me -- are external, are in fact, part of Sprint's core network. There is no escaping that

fact and we submit to you that Comcast has no business saying something different to you in this courtroom.

That's SMS. What about MMS, well, you know by now Sprint used the Syniverse Picture Mail solution once upon a time. It's shown here on DX-229. Syniverse Picture Mail hosted. And you also know from the testimony of Mr. Lanning, how did Syniverse communicate with elements within Sprint's core network, it used a VPN, a virtual network. That's what you use when you're external, just like when you may log into your office from your home network. You're not on the office network, you're on your home network and you use VPN to communicate when you're external. That's how Syniverse Picture Mail communicated. It's never been a Sprint's SMSCs and now it's MMSCs communicate with other core network elements.

You also heard that Sprint decided to transition away from Syniverse Picture Mail. This was the document describing that process. And what did Sprint say in this document it was doing? What was it doing? It was transitioning to the fully-owned core network Acision MMSC. The fully-owned core network MMSC, that's what Sprint's documents say. Mr. Yarkosky, he testified to you. He explained to you what that meant. It meant that something we purchased, we installed in our core network and integrated into that core network. Takes us back the MMS standards. As

you understand from the testimony of Mr. Lanning and engineers and personnel of Sprint, like Mr. Yarkosky, Mr. Wilson, like Mr. Hoelzle, Sprint is now using scenario 2 that's described in this document. The MMS messaging server is within the core network, that's the language in the standards. Was in the core network of what? Of Sprint's cellular network, you see that language in bubble number two. That's the standard. That's what Sprint is now doing through MMS.

Sprint's MMS that is accused in this case, ladies and gentlemen, now looks just like its SMS and neither looks like what the claims of the '870 Patent require. They're internal messaging servers. The patent requires external messaging servers. All of the claims of the '870 Patent, 1, 7 and 113 make that mandatory and Sprint doesn't do it. Mr. Lanning explained to you that because all of those messaging servers are internal to Sprint's cellular network, Sprint doesn't infringe Claim 1 or Claim 7 or Claim 113. That's the evidence.

So, in the face of that evidence, this overwhelming evidence that Sprint's messaging servers are inside its cellular network, Comcast presents to you Dr. Akl and only Dr. Akl. He spent hours on the stand with you. So, if you sort through all of those hours, you break down everything he said, what do you end up with? You end up with one theory

after another that is unsupported by any evidence. In fact, it's contrary to all of the evidence. It's unsupported by any fact witness. In fact, it's contrary to every fact witness you heard from. It's unsupported by any literature, whether written by Dr. Akl in his many papers or by anybody else. Not one piece of literature to support his theories. And ultimately, it's un-supportable at all.

And I want to take you through each of the theories that Dr. Akl presented to you and I want to look at those more closely. I want to start first with a theory that you heard particularly early on in the case, that said focus on 1999. You kept seeing slides of the 1999 invention. Well, not only is that not right, it's contrary to how you will be instructed by Judge Dubois this afternoon with respect to the issue of infringement. What is the relevant time period for alleged infringement? You have it on your screens. It's 2006 to the present, it's not 1999.

Mr. Baird, can you pull up the jury instruction that the jury will receive with respect to this issue? This is an instruction you'll receive this afternoon, ladies and gentlemen, with respect to infringement. It says in order to prove infringement, Comcast must prove that the requirements for infringement are met by a preponderance of the evidence, i.e. that it is more likely than not that all of the requirements for infringement have been proved. When?

Starting on February 17, 2006.

Comcast's own expert, Dr. Dwoskin agrees. I asked him, you focused on 2006 to the present, why? He said he understood that that was because that's what matters in this case when it comes to the issue of whether Sprint does what the '870 Patent says. That's Comcast's own expert. 1999, ladies and gentlemen, is the date that matters for invalidity, not for infringement. In fact, if 1999 mattered for alleged infringement, we wouldn't be here, since Dr. Akl, himself, says that the SPS database that he alleges is part of Sprint's core network, it didn't exist until 2010. And as Mr. Yarkosky testified, the PDSN that Dr. Akl says is core, it didn't exist at all at Sprint until 2002. 2006 to the present is the time period you need to consider.

Second, let's take a closer look at Dr. Akl's functionality is all that matters theory. Functionality is all that matters. You've seen why that theory cannot be right. Why? For starters, it's not what the Court's claim construction says. As Dr. Akl admitted, there is nothing in Judge Dubois' definition of cellular network that says core functionality. What does it say? You have it up on your screens, it's behind Tab 2 in your binders. It doesn't say core network functionality. It doesn't say core functionality. It says core network elements, core network elements. And then it lists a series of actual components,

not functions, as examples of core network elements. The mobile switching centers, they're equipment, that's not a function. The packet switching nodes, a subscriber databases like an HLR and messaging servers, all equipment. In fact, you heard me ask Dr. Akl about that yesterday. He said a messaging server is a computer, it's a piece of equipment, it is not a function. The Court's claim construction, it's definition of cellular network talks in terms of equipment. So does the patent.

As you now know, the words core functionality, they don't appear anywhere in the '870 Patent. You've seen the '870 Patent, it's a long patent. The words core functionality are nowhere in there. The word essential isn't in there either. Nor is the word speed. Nor is the word messaging network. Dr. Akl's words. Dr. Akl's words. You also know now that Dr. Akl's focus on function only is not the analysis that an engineer would undertake in the real world if he or she was designing a cellular network.

Mr. Lanning gave you the example of a washer and dryer. Just telling you whether the washer and dryer, remember he said, are performing the functions of washing and drying. That's all you know what their functions are. That doesn't tell you anything about whether the washer and dryer are internal or external to the apartment. You can't just look at function. As Mr. Lanning explained, you have to look

at function, you have to look at logical connections and you have to look at physical. Functional, logical and physical, you have to look at all three and that's what Mr. Lanning did in his analysis.

But he also told you that if you disagree with him, even if you think Dr. Akl is correct that function is the place to be, function is where you need to look. Look at what the evidence shows that a messaging server does. To hear it talked about today, you'd think it was just this dummy box that sat there and did nothing. What does the evidence say? You heard Judge Dubois tell you yesterday, closing arguments aren't evidence. Where is the evidence then?

Well, Mr. Hoelzle, who is responsible for SMS and MMS at Sprint, said that the messaging servers are the brains of the operation. What are they responsible for doing? For routing and delivering the messages to and from Sprint's subscribers. You saw Mr. Lanning's presentation, Sprint's messaging servers are the equipment that actually are responsible for routing to external networks. And if a Sprint subscriber sends an SMS message to a T-Mobile subscriber, it goes to Sprint's SMS and Sprint's SMS makes the decision to rout it out towards T-Mobile, out to the inner-carrier gateway. It also does routing within Sprint's network. Mr. Lanning took you through that. You heard today

that getting phones to talk to other phones, that's what a core function is. That's what Comcast counsel told you. And he told you the messaging servers aren't core because they're not involved in connecting the phone to other phones or to other networks. The evidence in this case is un-disputed that the messaging servers are not only involved in connecting phones to other phones or other networks, they're critical. It doesn't happen without the messaging server. It's the last place a text message goes before it goes out to that inner-carrier gateway. They do routing. Dr. Akl, himself, admitted it.

This was Dr. Akl confirming in his deposition testimony, when he said, yes, the SMSC and the MMSC at Sprint help in routing communications. That was Dr. Akl's admission. That's what messaging servers do.

Now, related to this functional-only theory, as Dr. Akl's messaging servers are not essential. You heard that a lot. Well, Dr. Akl agreed that a messaging server is essential to receiving or sending a text message. You cannot send an SMS or MMS message at Sprint without a messaging server and Dr. Akl, himself, told you that. Also, remember the Court's definition says core network elements. It doesn't say essential, that's Dr. Akl.

I'd also ask you to put Dr. Akl's messaging is not essential theory to the test, by looking at what Dr. Akl says

is essential. What does Comcast say is essential? Voice and surfing the internet. Those are both essential. But as good fortune would have it for Comcast, messaging is not. How so? How so? Dr. Akl also says that messaging servers are not essential, because they don't relate to voice and internet surfing. But the messaging LDAP database is essential. That's his testimony. The messaging LDAP is core. All of the evidence in this case, there's no contrary evidence, tells you that Sprint used the messaging LDAP only for messaging. That's all it was used for. But Dr. Akl tells you that it's core and the messaging servers are not. Here's Mr. Golla's testimony, what was the messaging LDAP used for, was it used for anything other than messaging? No. Messaging servers access messaging LDAPs.

Dr. Akl also says that the database that has information, the SPS is essential, but the messaging server is not. The phone book, picture the phone book, that's essential because it's where you go and look up a number, but the actual thing that is doing the work, once it gets that number and deciding where it goes, that's not essential. That's what Dr. Akl is saying about messaging servers. Now, as Mr. Lanning told you more than once, that makes no sense to an engineer who is actually designing cellular networks.

Finally, take a closer look at Dr. Akl's newfound theory, that their existing message network that is separate

and apart from the cellular network. Dr. Akl has made that theory up for purposes of this case. You heard from multiple Sprint witnesses that any reference to a messaging network is to a subset of the cellular network. Just like voice network and data network are commonly used to refer to the parts of the cellular network. Mr. Yarkosky was an example. Have you ever just heard anyone describe a messaging network as being separate from the cellular network? No, when you talk about the network, it's really the network that's supporting voice, messaging and data. Dr. Akl, himself, was forced to admit on cross-examination, that he, too, uses the words voice network and data network to describe portions of the cellular network. He did it in describing his own dissertation.

And Dr. Akl did not point you to one book, to one article, to one paper whether written by him or anybody else, at any point in the history of all of the literature that's been written about cellular networks and about messaging. He didn't point you to one place where one person has ever said the words that messaging network means a network that is separate from the cellular network as opposed to one of the three legs of the cellular network stool. And think about how many pages of standards you've seen in this case alone. Most of them having to do with messaging. Never, not once, do those standards ever say that there is a messaging network that is something outside of the cellular network. Dr. Akl's

theory is contrary to how even Mr. Koch, of Comcast, understands the cellular network that Comcast leased under the Sprint/Comcast contract.

Here's what Mr. Koch has to say about that. As part of that contract, Comcast was trying to secure access to the data network, to the voice network and to SMS messaging, all as part of an agreement to get access to Sprint's cellular network. That's Mr. Koch of Comcast, that's his testimony.

So, where does that leave us? Comcast, not Sprint, has the burden to prove infringement in this case. Comcast has the burden to prove infringement in this case. And what does Comcast have? What does Comcast have? Comcast has the conclusory testimony of one expert witness, who was hired for purposes of this case. Conclusory opinion not supported by the evidence. All they have is Dr. Akl. Think about the hundreds of thousands of pages of documents that have been produced in this case. Think about how many you've just seen in this courtroom. Not a single one says, not a single one of them says that Sprint's messaging servers are external to it's cellular network. Not a single one. Not a single standard's document from the American Standard's body says that Sprint's cellular network does not include messaging servers or the CDMA cellular network does not.

How about witnesses? Are there witnesses that support Dr. Akl's theory? Well, let's look at the fact

witnesses who Comcast called in this case. This was the slide Comcast showed you in its opening. First, we had Mr. Finnegan. Mr. Finnegan testified to you that Comcast is focused on technology by building a very big building, I think he said it was going to be the second or tallest one in the world. And by developing its own inventions internally. That's what Mr. Finnegan said. Well, the '870 Patent isn't one of them. It was bought, not developed by Comcast. And it's not even used by Comcast to provide SMS and MMS messaging to its own customers. What else did Mr. Finnegan confirm? He confirmed that Comcast wants to make a move into the cellular business, just as I said to you in my opening statement.

How about Mr. Dellinger, what did he have to say? Well, he talked about the Nokia deal. He told you Nokia's opening offer, Nokia's best-case scenario for this patent was $1.5 million. That's what Mr. Dellinger had to say. How about Mr. Marcus? Mr. Marcus came and he talked to you about the re-examination. We're going to get to that in a moment. Not one of these three witnesses talked to you about the issue that matters most to you in this case. Inside or outside? Not one of them.

How about any Sprint fact witnesses? Comcast didn't even play a single deposition video for you of a Sprint fact witness. They didn't bring on Sprint fact witness to the

stand. All of the testimony that you heard from Sprint witnesses and you saw live and on video, Sprint called them to the stand. Not one of those witnesses supported Dr. Akl's position. How about any other Comcast expert witness? Did he have any other support for his theory that the messaging servers are external? No. Dr. Dwoskin, who you heard testify, he said he had no opinion at all on the question of inside or outside.

How about any of the Comcast technical personnel that you heard about who worked on the Comcast/Sprint contract, the MVNO agreement defining core network? Not a single one of them was called to the stand by Comcast to say anything differently than what Mr. Kalinoski told you and what Mr. Koch, of Comcast himself admitted. How about a standard's witness. How about a standard's witness to contradict what Mr. Lipford of Sprint told you about the 1997 and 1999 standards? They didn't bring one. They didn't bring one.

How about Inventor Ahou? How about Inventor Ahou to support what Dr. Akl now says the '870 Patent is about? They didn't bring her either. How about any Nokia person to contradict what Mr. Golla showed you Nokia's own documents say about Sprint's messaging servers being internal systems? They didn't bring one. Look how many people, look how many people Comcast got to come to this closing argument, to

listen to this closing argument in this courtroom. When Comcast wants somebody to get here, they get here. They couldn't find a single person to get on that stand and support Dr. Akl's theory, not a single person.

Now, let's compare that to what Sprint has shown you. You heard from Mr. Lanning. Talk about a guy who has lived and breathed this stuff for his entire life. He testified to you that he, himself, was actually installing messaging servers inside of cellular networks going back to the 1990, including when he designed the British Telecom cellular network. He explained to you, point by point, what actually goes into that determination. Not the seven factor analysis that was made up by Comcast counsel first during his deposition and again here. He showed you how Sprint's messaging servers, other than Syniverse Picture Mail are functionally, logically and physically inside of Sprint's cellular network. And that's the analysis we just went through earlier today.

But Sprint didn't stop there. We didn't stop with an expert witness. We brought you fact witnesses. We brought you fact witnesses. Not hired for purposes of this case, fact witnesses. We talked earlier about Mr. Kalinoski's testimony with respect to the Comcast/Sprint contract defining core network as including messaging servers. We talk about Mr. Lipford's testimony, about the

American Standards defining messaging servers inside the collective entity, inside the core network. We talked about Mr. Yarkosky, he was responsible for the transition of the external Picture Mail solution to an internal MMSC because of all the problems that having an external caused. And you heard from Mr. Wilson and Mr. Hoelzle, the two guys responsible for SMS and MMS over time. And they each told you that the messaging servers have always been inside and they showed you the design documents to prove it. And you heard from Mr. Golla, the one who was challenged with respect to whether he had, perhaps, doctored a document to include the words core site for your benefit. And finally, you heard from Mr. O'Connor, the gentleman to whom Mr. Golla and Mr. Hoelzle reports. His title is vice president for network core and access and he talked about the messaging servers being critical elements, including for public safety reasons, remember that? Text to 9-1-1 and public alerts.

Dr. Akl told you to apply the plain and ordinary meaning of core to a person of skill in the art and told you that's the definition found in Merriam Webster's Dictionary. Well, Mr. Kalinoski, Mr. Lipford, Mr. Yarkosky, Mr. Wilson, Mr. Hoelzle, Mr. Golla, they are all persons of ordinary skill in the art, under Dr. Akl's own definition. So, how these folks think of core network elements, how these folks know messaging servers are core network elements at Sprint,

that matters. And each of them testified to you under oath, under oath in this courtroom that Sprint's messaging servers are core network elements.

But we didn't stop there either. We showed you the American Standards. We didn't run away from the 1999 standard like Comcast has. We showed you exactly what those standards say. The 1999 standard, the messaging servers inside the core network with every other element that is set forth in Judge Dubois definition of cellular network in your binders. We didn't stop there. We showed you one Sprint design document after another, DX-12, DX-13, DX-209, DX-215, each of them -- each of them describing Sprint's messaging servers as core.

We didn't stop there. We showed you the Sprint/Comcast contract. What did the Sprint/Comcast contract do? It defined core network. It defined core network to include the SMS infrastructure, the SMS infrastructure included the SMSCs, the short message server centers, the messaging servers. 2008, the same messaging servers that are accused in this case, the contract defined them in the core network.

And we didn't stop there. We also showed you the Nokia Siemans SPS specification document, where Nokia, Mr. Golla testified to you, described and defined Sprint's messaging servers as internal messaging systems. Sprint,

Nokia and Comcast those are the three companies who you've heard about most in this case. Those are the three companies who matter most in this case. And every single one of them, Sprint, Comcast and Nokia has said, in writing in one way, shape or another, before this lawsuit ever happened, outside the context of this lawsuit, that Sprint's messaging servers are internal systems that are part of Sprint's core cellular network. The only person, the only person who has ever said something different is Comcast's hired expert, Dr. Akl.

They have the burden of proof, ladies and gentlemen, they've got the burden of proof, but Sprint has shown you all of the evidence.

Let's go back to our verdict form, remember the very first question, did Comcast prove by a preponderance of the evidence, that Sprint has infringed any of the following claims. A yes is a finding for Comcast. A no is a finding for Sprint and we would submit to you that all of the evidence shows that the answer to that question for Claim 1 is no, for Claim 7 is no, for Claim 113 is no. If you agree and if you do that, that's it. You can sign and date the verdict sheet, you return it to the Court and your job is done. That's infringement.

Now, Comcast counsel said he would be talking about invalidity on rebuttal. Sprint has advanced the defense of invalidity. So, it's my job to talk to you about that now.

I'm going to talk about invalidity, it's going to be shorter than the presentation I just gave you by good measure. And then I'm going to talk to you briefly about damages.

So, if you find that Sprint has infringed, which you submit to you, you should not. If you find that Sprint has infringed, you'll next address the question of whether the '870 Patent is valid or invalid. And when it comes to invalidity, Comcast is betting that you're not going to look beyond the fact that the '870 Patent made it through the patent office. But remember, I explained to you in opening why is it that you, the jury, get the last word on invalidity and not the Government. It's because you get to hear and see both sides of the story. You get to see prior art, here that prior art is Sonera and Viaresto that the patent office was never provided.

You can see from the face of the '870 Patent itself, that hardly any prior art was cited at all during the initial examination of the patent. Then Comcast brought Mr. Marcus here to tell you that the '870 Patent that Comcast filed itself, Comcast filed, that that was supposedly a cure. But you can judge for yourselves, ladies and gentlemen, how credible Mr. Marcus' testimony was in this courtroom. You saw Mr. Marcus on videotape on a formal panel, where he was sitting with the former chief judge of the highest patent court in this country. You heard him give you his real take

on re-examination as chief patent counsel at Comcast.

What did Mr. Marcus tell you on that videotape? He told you, "You can always put your patent in re-exam and seek all kinds of claims. Anytime you put a patent in ex parte re-exam, that process is very much tilted in favor of the patent owners. Oftentimes, 150 new claims are added." All Mr. Marcus' words. And then what does the patent owner do, this is what Mr. Marcus says, take all the prior art, they dump everything in there and now you've got ten pages of prior art, you know, that all have supposedly, supposedly been considered by the examiner. And then, again Mr. Marcus' words, magically, there's the post-final examiner interview and then all of a sudden, all claims are confirmed and no one has any idea what happened or why. Those are Mr. Marcus' own words. That's the ex parte re-examination process that Comcast put the '870 Patent through.

As I told you at the outset, you are the first ones to consider whether the '870 Patent is invalid in light of the Sonera and Viaresto references. You're the first ones. And here is what you've been the first ones to hear and see. Dr. Polish came here and he walked you through element by element of the '870 Patent claims are anticipated. That's a word you're going to see on the verdict sheet, as well, anticipated by the published Sonera patent reference that was not considered by the Government and was not provided by

Comcast in the re-examination.

Dr. Polish explained how he focused on the mapping and determining steps in particular, because those looked to be, to him, the ones that were primary and because Dr. Akl admitted himself, in this case, that steps 1 and 4 of the claims, the external messaging server and the response message were already taught by the prior art. Remember my examination of Dr. Akl yesterday on this subject. It took some work, but we finally heard him concede that point here, too. Contrary to what Dr. Akl told you on his board, that he wrote on, on direct examination, Ms. Ahou did not come up with the idea of storing a message outside the GSM cellular network. Others came up with that idea before.

Dr. Akl admitted on the stand yesterday, that SMSCs and MMSCs were typically external to the cellular network, typically, in GSM before the '870 Patent and that messaging servers meeting the Court's definition existed before the '870 Patent, too. Here is what he said. I asked him, "that is because in the prior art it was already taught that there was a messaging server as that term is used in these claims, external to the cellular network." Dr. Akl's answer, "Yes." Contrary to what he wrote on his board, the problem of message volume, that wasn't the '870 Patent's problem to solve. It had already been solved. And the solution of keeping SMS and MMS messages out of the cellular network

until the phone is ready to receive, that wasn't a solution of the '870 Patent. It was prior art in GSM networks and Dr. Akl admitted that yesterday, too.

So, Dr. Polish focused in particular on the mapping and determining steps of the '870 Patent claims. Those were the two steps that Dr. Akl said in this case, were new. And Dr. Polish explained to you how those two steps look a lot like a cellular network version of walking up to a bank teller and asking for your account balance. Can we go to that?

(Pause.)

MR. FINKELSON: Before we get to this slide, remember Dr. Akl explained the bank teller example and he showed the steps of the bank teller side-by-side with the steps of the patent claims to show you how those two things look very similar to one another. He then walked you through what Sonera was all about. And that's what the slide on your screen is detailing. A person who is trying to text, for example, Dr. Polish gave 1-800-gethelp, sends it to that number and what happens is, the cellular system looks up in its databases and decides the actual human being with a phone that should receive the text message. The actual human being who should receive the text message. Remember that was on the snow day that none of got to enjoy. It's like trying to get in touch with Ms. Hull to see whether you needed to get here

or not. And you go to a central number, which you end up with the person who's actually going to answer you text message and respond, unfortunately, ladies and gentlemen, you must come to court today or something like that. That's what Sonera is about and Dr. Polish explained that to you.

And he also explained to you that Sonera is in the same field as the '870 Patent. A short message system in a mobile communication network. He also explained to you that it involves the same type of network, GSM networks, the European solution, that's what Sonera is coming out of. And he told you that it addresses the same problems of the '870 Patent. Allowing the messaging server to be separate from the cellular network, but still be able to get a short message to a wireless device. And he told you how, step-by-step Sonera described the same GSM European solution to the same GSM European problem confronted by the '870 Patent. Mapping two identifiers to numbers together to determine the information that we need. And he took you step-by-step. He started here, you may remember this slide, this is his discussion of Figure 1 of Sonera. It shows how each of the four claim steps of Claim 1 of the '870 Patent occurs in Sonera. How the mapping and determining was done.

Now, as I heard it yesterday, the primary criticism from Comcast and Dr. Akl about Dr. Polish's approach is Dr. Polish put a box around the SMSC and the SMSG-MSC together.

Dr. Akl said yesterday we can't do that. One is storing, the other is sending the inquiry. You can't just put the two together. Well, Dr. Akl may not have recalled his testimony from last week. This is what Dr. Akl had to say when he was on the stand last week. "Is it common thing for skilled artisans to think about the combination of two different computers being the messaging server or is that uncommon?"

"Answer: If you have a component that's assisting or the querying is going through a component, that's perfectly fine. You can draw a box or a circle around both as the messaging server." That's not Dr. Polish's testimony, that's Dr. Akl's own testimony in this case. Dr. Polish did just what Dr. Akl said. Dr. Polish also took you to Figure 2-A, just to show you in detail how he went step-by-step in Sonera discloses each of the four elements of Claim 1 of the '870 Patent. He color-coded it so you could see how it corresponded to each of the steps of the claim.

The patent office never considered Sonera. Comcast didn't provide Sonera to the patent office during the re-examination. Can we pull up the jury instruction with respect to that? This is an instruction that you'll receive this afternoon from Judge Dubois on the scope and content of the prior art. And what he will tell you is this, in part. Where the party challenging the validity of a patent is relying on prior art that was not considered by the PTO

during examination, you may consider whether that prior art is significantly different and more relevant than the prior art that the PTO did consider. If you decide it's different and more relevant, you may weigh that prior art more heavily when considering whether Sprint has carried it's clear and convincing burden of proving invalidity.

Dr. Polish considered Sonera and so, too, have you considered Sonera and you've seen Sonera discloses each and every element of 1, 7 and 113 of the '870 Patent that it anticipates. That's anticipation. Dr. Polish also told you that if there's anything missing from Sonera, that missing information would have been known to a person of ordinary skill in the art, with the benefit of Sonera. And also would have been known by combining Sonera with the other patent applications that he discussed with you, Viaresto. Viaresto wasn't considered by the patent office either. Comcast did not provide Viaresto in the re-examination. And Dr. Polish explained how through this combination it means that the '870 Patent is not only anticipated, but it's also obvious.

Again, another word you're going to see on the verdict form. It's obvious, he explained why. He explained to you what was known in the prior art with respect to databases, how databases were common knowledge, things that people had known about well before. And Dr. Polish wasn't the only one who told you that. You also heard on video from

Dr. Tirana. He told you about how indexing to look up information in databases was around from before he was born most likely. Even Comcast's expert, Dr. Dwoskin, told you that he didn't have to think about mapping in any special way when he did his analysis in this case. He said it was just determining a correspondence between one thing and another thing.

Dr. Polish also showed you where in the background discussion of Viaresto it talks about mapping the same two types of numbers that the '870 Patent talks about. And he also showed you where Viaresto depicts an external messaging server, an external messaging server that receives and send messages from the cellular network. This is DX-242 Viaresto, Figure 1, that Dr. Polish discussed with you. Accordingly, Dr. Polish said to you, not only is there anticipation, but there is obviousness of Sonera plus Viaresto. He showed you that with a check-plus for all of the steps of the claims for which that was the case -- for which he relied on Viaresto for the obviousness combination. This is Claim 1, he reached the same conclusion with respect to Claim 7 and Claim 113. Each is anticipated by Sonera and each is obvious over Sonera, plus the knowledge of one of skill in the art and Sonera plus Viaresto. He was Dr. Polish explaining his conclusions.

Sprint has the burden. I talked a lot about burden

on infringement. Comcast has the burden on infringement. On invalidity, I told you in my opening, I'm going to tell you again here today, Sprint has the burden of proving invalidity clearly and convincingly -- by clear and convincing evidence. We've owned that burden and we submit to you that we have met it.

I showed you the infringement question on the verdict form, that's Question 1. You don't get to Question 2 unless you find that Sprint has infringed. If you get to Question 2, the next question for you is about invalidity. There's two of them. Question 2 is about anticipation. Did Sprint prove by clear and convincing evidence that any of the following claims of the '870 Patent are invalid as anticipated by a single prior art reference. Yes, for Sprint and we submit to you that yes is the answer for Claim 1, Claim 7 and 113. If you get to invalidity. The same is true on Question Number 3, invalidity for obviousness. Invalid as obvious at the time of the invention. We submit to you the answer on Question 3 is yes. Sprint has proved by clear and convincing evidence that the patent is invalid. So, yes for anticipation, yes for obviousness. And again, if you answer yes to all of the claims for either Question 2 or Question 3, then again, your job is done and you stop there.

The last page of the verdict sheet is on damages. We don't believe that's an issue that you will need to get

to. The only way you get to them damages is if you find that a claim has both infringed and is valid. If you find Sprint doesn't infringe, you don't get to the damages section and the damages are zero. If you find that each of the '870 Patent claims is invalid and you're also done. You don't get to the damages section and the damages are zero.

But if you do get to damages, it's going to be your job to decide what damages are reasonable to award to Comcast. Reasonable. There's going to be two issues for you. One is the type of royalty and the second is the amount of the royalty. On the type of royalty, if there is a royalty in this case, all the evidence points to the fact that Sprint and Nokia would have agreed to a lump sum payment for the life of the '870 Patent. Sprint and Nokia would not have agreed to an ongoing royalty that every minute of every day of every year since 2006 would give Comcast a little bit more money each time a Sprint subscriber sends or receives a SMS or MMS message.

You heard from Dr. Cox that it is business practice in this industry to do lump sum, one-time payment agreements. He reviewed the agreements produced in this case. He reviewed other agreements and he told you that all of those point to a lump sum and he's not alone. Here's the testimony of Ms. Riley, Comcast's expert. She agreed that all of the agreements that she looked at in this case, were in the form

of a lump sum. All of them, including ones involving Sprint. Including ones involving Nokia. Including ones involving Comcast. All lump sum payments. So, if you find that there should be a royalty in this case, it should be in the form of a lump sum.

Then there's the question of amount. If you find that there should be a royalty in this case, Dr. Cox has given Comcast all of the reasonable benefits of the doubt and he has shown you that if there was a negotiation between Sprint and Nokia in 2005, those two parties would have agreed on a lump sum payment of $1.5 million for Sprint to use the '870 Patent for the life of the patent. What does Dr. Cox's analysis do? It accounts for the actual value of the '870 Patent. The actual value of the '870 Patent. Where did he find that value? He started with Nokia's own valuation. This is DX-150. This is one of the exhibits that's going to be back there in the deliberation room with you. Remember, this was the form that was filled out by Nokia, by Ms. Ahou's manager, assessing the value of this invention in 1999 and giving it a valuation of 2 on a scale of zero to 5. A modest invention. Dr. Cox took that into account. He also looked at the other data points. How did Nokia value it's invention in the '870 Patent in 2010. It sold it to Comcast along with numerous other patents for $600,000. Those are the hard data points on which Dr. Cox relied.

Ms. Riley, she testified that in between those two times, on April 26, 2005, somehow, some way, Comcast says that Sprint and Nokia would have agreed on a license. Not a purchase, but a license to Sprint of the '870 Patent for over $153 million. Here's what Dr. Cox had to say about Ms. Riley's 2005 spike. Ms. Riley wants us to believe that the patent value went way up around 2005 and then way back down in 2010. She doesn't provide any explanation for why. The fact is that Ms. Riley's spike in 2005, just at the hypothetical negotiation date, ignores Nokia's own real world valuation of the '870 Patent as a 2, ignores Nokia's own real world valuation of at most $600,000 for the '870 Patent when it sold it to Comcast as part of a whole package of patents in 2010, including two other issued U.S. Patents. And it ignores Nokia's own real world, best-case scenario for the '870 Patent, which you know is $1.5 million. That's what Mr. Dellinger told you was Nokia's opening offer to Comcast before Comcast even countered.

If you're on a platform in the middle of a sea, you don't give away your assets for less than they're worth. You extract as much value for those assets as you possibly can. Their opening offer was $1.5 million. That was the most that Nokia thought it could sell the '870 Patent for on its best day. Ms. Riley also overstates the supposed issues with Nokia's financial condition in 2010. We heard more about

that today. The evidence shows you that Nokia has been and remains a major player in the cellular industry. $2.5 billion in operating profits in 2010. The same year that Comcast would have you believe it sold this patent at a fire sale price. And Nokia recently bought Alcotel-Lucent for $16 billion.

Comcast has the burden of proving the amount of damages to you. Again, you'll here that in the instructions. That's Comcast's burden. If Nokia really thought that the price of this patent skyrocketed in 2005, when Ms. Riley spiked. If Nokia really thought that, why hasn't Comcast brought you a Nokia witness to say that? You heard the names of the individuals who were involved in the deal at Nokia. Why hasn't Comcast brought you testimony from a Nokia witness? The answer is there is none. It couldn't get a Nokia witness here to support Ms. Riley's theory.

This is what Ms. Riley would have you accept. The '870 Patent sold to Comcast for $600,000 and it makes no common sense, it makes no economic sense that Nokia and Sprint would agree that Sprint would rent a room, a license, rent a room in the '870 Patent house for over $153,000 million when you know that Nokia was willing to sell the whole house and a couple of other houses in the neighborhood for $600,000. That doesn't make common sense, it doesn't make economic sense. What makes common sense and economic

sense is Dr. Cox's methodology. You look at the real world $600,000 sale. You account reasonably for the differences between it and the hypothetical negotiation, including the fact that the sale was for three patents and not just one. Just like he explained to you, you would look at the Kelly Blue Book and make adjustments if you were buying a car.

Judge Dubois is going to instruct you this afternoon that the factors that you may consider in making your determination on damages include comparable license agreements such as those covering the use of the claimed invention. What that means is look at what Nokia sold the '870 Patent for. As Dr. Cox and Dr. Dippon also told you, you, you have to account for the costs in the transmission of an SMS and MMS message, including the Spectrum and the towers and other costs that Ms. Riley and Mr. Webber omitted entirely. Dr. Dippon took you through that in detail. He told you he had done wireless telecommunication analysis like these before. Mr. Webber admitted to you that he had never done them before in wireless. Costs, so if I'm sending an SMS message to you, I'm sitting here and you're sitting there. All of these costs, all of them, Mr. Webber leaves out. Ms. Riley leaves out. Then counts some costs in here and then all of these steps, as I come closer to you and I'm not going to go any further lest I be chastised, all of these steps as they come to you phone, he doesn't count those

either. None of those costs in Mr. Webber's analysis and Ms. Riley's analysis depends on Mr. Webber's mistake.

Ms. Riley's free-rider analogy, it doesn't work for the same reason. You heard Dr. Dippon on the stand. He explained that Sprint built it's 3G network for voice, data and messaging. And he showed you the 2003 10K from Sprint to confirm it. Ms. Riley missed that and her analysis depends on that mistake, too. Dr. Cox also pointed out the mistakes that Ms. Riley made in relying on Dr. Akl's step-counting method. Remember that, Dr. Akl tried to count how many steps he thinks are infringing. Well, as Mr. Lanning and Dr. Cox explained, if you are going to go down that road and you're asking for a royalty on each SMS and MMS message that is sent and received, you have to account for all of the steps in the transmission of that SMS or MMS message, not just a made-to-order subset.

Same thing, I'm sending a text message to you, these are all the steps involved in that process. Dr. Akl counts just a few of those steps. He leaves out all of the rest, all of the steps that are set out in detail in Sprint's documents, DX-230, that shows you all the steps. Dr. Akl didn't count them. Ms. Riley relied on Dr. Akl and her analysis depends on that mistake, as well.

So, last issue on the verdict form is damages. It's Questions Number 4 and 5. Questions Number 4 and 5, if you

reach the issue of damages, which again Sprint believes you should not, the maximum royalty payment to Comcast that is supported by the evidence, would be $1.5 million. If you agree with that, that would be the answer to Question 4.

Now, in Question 5, which asks you about the type of royalty, if you believe the analysis of Dr. Cox and Dr. Dippon, the evidence supports the finding of a lump sum royalty for the life of the '870 Patent as opposed to an ongoing royalty, should you reach the issue of royalties at all. But again, ladies and gentleman, Sprint submits to you that you never get there. You never get there, because this case begins and ends with Sprint's messaging servers that are inside of Sprint's cellular network. Not outside as the '870 Patent requires. It begins and it ends on Question 1 of the verdict sheet with a finding of no infringement. Thank you again for your time and for your service.

THE COURT: Thank you, Mr. Finkelson.

MR. FINKELSON: Thank you, your Honor.

THE COURT: Ladies and gentlemen, it's been a long morning, it's not quite ten minutes of 1:00. We'll recess for an hour. When we return, Mr. Goettle will give his rebuttal and then I will instruct you on the law. Remember, if you're in the middle of deliberations and wish to stay tonight, you can. And request that of me and I'll discuss it with counsel. And in all probability, we'll agree and I only

tell this again so that you can notify friends and family at home. By the way, we're going to, Michael, we're going to move this back. I can't see half the jury and that's not a good idea.

AUDIO OPERATOR: Right now?

THE COURT: What?

AUDIO OPERATOR: Right now?

THE COURT: No, no. But notify friends and family that this might be a different evening. I'll give you these instructions again later. All right.

THE DEPUTY CLERK: All rise.

(Jury exits.)

THE COURT: Be seated, everyone. Is there anything we have to address? I made one minor change in the charge. For some reason or other, our computer did not automatically change the table of contents to square it with what we did with the form of reasonable royalty charge. We changed it to calculation of reasonable royalty. We changed now in the table of contents. I thought that was done automatically. In any event, recess for about an hour. How long do you think you'll be in rebuttal?

MR. GOETTLE: 20 minutes, your Honor.

THE COURT: All right, I'm not sure how long the charge will be. But we'll get started on deliberations today. What is the timetable for the exhibit lists?

MR. GOETTLE: Can I get back to you right after lunch?

THE COURT: Yes, we'll do that after lunch.

MR. RIOPELLE: Sprint's are ready.

THE COURT: All right.

MR. GOETTLE: We're ready, oh, apparently we're ready as well, your Honor. We were ready before Sprint.

MR. FINKELSON: If we were ready, it will be the first time we're ready before them in this case.

THE COURT: I'd like to see them. First of all, I want them and can I see copies. You can hand that up, I'll look at it before we commence this afternoon. Michael, we're in recess for an hour.

THE DEPUTY CLERK: All rise.

(Court in recess 12:50 to 2:02 o'clock p.m.)

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AFTERNOON SESSION

(The following occurred in open court at 2:02 o'clock p.m.)

THE DEPUTY CLERK: All rise.

THE COURT: Good afternoon, please be seated. Mr. Goettle, you may proceed.

MR. GOETTLE: Thank you, your Honor. I was told that I was precariously close to spilling this the entire time -- I'm going to put that there.

Okay, I listened to Sprint's counsel's --

MR. FINKELSON: Mr. Goettle, before you get started, do you mind if I move?

MR. GOETTLE: Not at all. I listened to Sprint's counsel's remarks to you and I think maybe there's a way to sort of summarize where we are, at least, the way Comcast sees it. We have Dr. Akl. We have Mr. Lanning. We have Mr. Lanning. I'll move out of the way in a second. We have Sprint employees and then we have empty chairs. Dr. Akl looked at the patent and I showed you this on my slides this morning and the patent refers to functionality. Dr. Akl looked at the claim construction and claim construction refers to functionality. The claim construction of cellular network, meaning four network elements and the construction of messaging server refers to functionality, those two functions, storing and forwarding and sending an inquiry.

And then Dr. Akl confirmed that functionality understanding with the standard, okay. Mr. Lanning, won seven holistic factors, that was the analysis that you heard when he was on the stand, that he told Comcast about at deposition, those were the seven holistic factors that I walked through this morning. And then we didn't hear a reference to the holistic factors during Sprint's presentation to you today. What we heard was this notion of functional, logical, physical. And there was comment about

how what Dr. Akl's saying is not in the patent. Holistic characteristics are not in the patent -- first of all, that's not true, again, the patent talks about functions. The claim construction refers to functions. The standard refers to functions. Dr. Akl told you there's nothing about these holistic characteristics in the patent. We talked about that. Function, logical, physical, not in the patent.

And then we had these Sprint employees and what these Sprint employees and this came up in Sprint's presentation to you just now, what they do is they look at what elements needed for core services. And we know the mantra by now of what's these witnesses say the core services are. Voice, messaging, data. These are the options that we have. We've got Dr. Akl with his analysis and then all these other columns are Sprint's. What's the empty chairs? Those are all the people that Sprint's counsel said were not here to testify before you. So, everybody else, this is everyone else. And I'm just going to put a question mark there. I don't know what they would say core network elements are and I don't think it's relevant.

I also know that we sat here for two and a half weeks already to call in more witnesses to put in front of you to talk about what they think core network elements are is no more advancing the ball than listening to Sprint employees take up your time for a day and a half, telling you

what they think core network elements are.

Here's the point. None of these people read the patent. None of those people applied the claim construction. I can't tell you these people didn't read the patent, because I don't know who they are, but I'll submit to you it doesn't matter. These people, there's only two of them, but one of them has an opinion that's morphing, are the only ones that read the patent. That's what matters in a patent case, is reading the patent, applying the patent to the accused services. That's what matters in a patent case. If you listen to the jury instructions today, that's what Judge Dubois is going to tell you.

Mr. Dyer, can you put up Sprint's counsel's -- I'm just going to move this out of the way so I don't knock it over.

MR. FINKELSON: Our Slide 7.

MR. GOETTLE: Thank you. There's a false dichotomy in this case that I did not pick up until -- your Honor, can I go up to the screen?

THE COURT: Yes, you may.

MR. GOETTLE: It's a false dichotomy in this case that I did not pick up on earlier in this case. There are not two options in implementing a messaging server under the MMS standard, this is the MMS standard. There are not two options. There are five. There are scenarios 1 and 2 and

there's scenario 5, okay. But the key language here on my point is what is not highlighted here. It says some network operators may wish to implement the MMS functionality within the core network, scenarios 1 and 2. And what I heard today, I didn't pick up on it earlier in this trial that I heard today.

So, there's one option, you put it in your core network or the other option is you make it a third-part service provider. Those are not the only two options. It's right here. It continues on and says, whereas others may wish to place the MMS functionality on the periphery of the core network. Others may wish to have MMS functionality outside the core network, unlike scenarios 1 and 2 where it's implemented inside the core network. You can have it inside the core network, you can have it outside the core network, it is functionality that we're talking about or you can implement it as a third-party service provider. So, there's, at least, three options in here.

Now, I'll submit to you that what Dr. Akl is telling you is when have the MMS functionality on the periphery of the core network, that's when you don't implement it in the core network elements. That's what that's saying. Mr. Dyer, can you put up DX-16, the MBMO agreement. This came up again and I talked about it this morning, but I think making the point a little bit more crystallized could be helpful. The

MBMO agreement has a definition. Not a construction, I almost said construction. A construction is a definition in a patent for a patent claim. This is a definition in a business agreement for core network and core network element enablers. They're mutually exclusive. How do you know that?

Because in core network it covers transmission. Infrastructure that provides transmission. Core network enablers are non-transmission elements. So, if you're this, if you're a core network enabler, you are not in the core network. Okay and now can we got to the Schedule 3, then later on in that, she specifies what are core network enablers? In E, home location register. Home location register is a core network enabler. Mr. Dyer, now go back to the definitions again. Does not include home location register, which everybody in this case agrees are core network elements, because they are non-transmission elements. Home location registers are databases that you do look ups for. They don't receive messages and send them along, they don't receive phone calls and send them along, but they're core to the cellular network because you need to know where the phone is in order to connect the call, just like I said this morning.

The definition is in a business agreement, it doesn't matter at all. But even if you're inclined to go look at it, what Comcast supposedly agreed to in 2008, two

years before it had the patent, two years before it was accusing -- or years before it was accusing Sprint of infringement, if you're inclined to go look at it, consider that the definition is, again, over-inclusive, under-inclusive and included in a business contract. Not in the patent, not in the claim construction.

Can you put up a slide that begins with 3. I apologize for this, I didn't realize -- this is a slide, by the way, I should step back. Because I did this and I'm explaining to you why Sprint employees don't matter and I explained this earlier, they don't matter -- they wouldn't matter anyway in a patent case. What fact witnesses think about terms that happen to also be used in the patent, is irrelevant. What fact witnesses are for in a patent case, is telling you how systems work, telling you how networks work. Perfectly fine to rely on fact witnesses to tell you about the accused product or services. Fact witnesses are not fine to do word matching. You don't go to a fact witness who happens to use a common work like core and then match it up to the claim and say, wa-la, no infringement.

And I showed you Mr. Lanning's testimony. He said, I showed it to you this morning, he said could be consistent with the Court's construction. Might not be. May or may not is the words he used, may or may not. What that means is it's irrelevant what they say. These are the same fact

witnesses, these types of witnesses, again, are the ones that writing the documents that you saw again today. If the testimony on the stand is not informative to you on how to apply to the claims to the accused products, then the documents these people are writing, using the same terminology about core to voice messaging and data services is equally irrelevant in your analysis.

And then we have Mr. Hoelzle's testimony that counsel showed you today and he's talking about the messaging servers in Sprint's network, whatever that is and he's saying they're basically the brains of the operation, so they're responsible for routing and delivering of messages to and from Sprint subscribers. I showed you this morning, messaging servers store and forward and make clarity. That's what they do. Forwarding, maybe that's routing, it doesn't matter. But again, messaging servers only forward to two places and they're told which place to go. They either forward to the inner-carrier gateway or the forward to the MSC, that they're told by the HLR which MSC to send it to. That's it. They are not the brains of any operation. What they are is core to messaging, a service that Sprint provides. They're core for that.

How do you know that? Well, if you get rid of the messaging server, you can't send messages. But that doesn't mean that they're core to Sprint's cellular network, which is

what the claim construction and this patent is about. What is core to the cellular network. So, this testimony is irrelevant. It's a red herring.

Okay and Mr. Golla's testimony -- so, this one's showing to you, Mr. Golla said and was the messaging LDAP that Sprint used for anything other than messaging, Mr. Golla? No, only messaging servers access messaging LDAP. Not true. And by the way -- never mind. Here's, I've got two different pieces of testimony for you. Here is Dr. Dwoskin. Dr. Dwoskin testified on February 3, 2017, it feels like a lifetime ago, at line -- page 54, line 17.

MR. FINKELSON: Your Honor?

MR. GOETTLE: Yes, you don't want to see it?

MR. FINKELSON: Well, if it's not in evidence, I don't think it's appropriate to --

MR. GOETTLE: No, no, this is his testimony in this case.

MR. FINKELSON: I thought you were referring to a prior deposition testimony.

MR. GOETTLE: No, no, I'm sorry.

MR. FINKELSON: Go ahead, I apologize for the interruption.

MR. GOETTLE: See how long ago February 3rd feels like to Sprint's counsel. I'm with them. I asked him, yes, "Question: Okay, what similar to the question I asked you

about the SPS, what clients, I think you referred to them, but what Sprint components or computers call to the messaging LDAP for data?

"Answer: So, similarly to before, there were SSMCs and MMSCs that query the MLDAP, as well as other components, such as Web Mail, Short Mail, Soap servers, there are a number of them that make querys to the messaging LDAP."

Unrefuted testimony in this case. Never cross-examined on it, no other witnesses come in here and said that what Dr. Dwoskin said is wrong.

And then similarly, Mr. Lanning testified on this subject at page -- this was on February 8, 2017 at page 117, line 21. I said -- oh, no, this is his answer. "You'll see another highlighted database up at the top, that's the message LDAP, that is the predecessor database to the SPS database." That's what the messaging LDAP is, just like Dr. Dwoskin testified. The predecessor to the subscriber profile system that even Sprint admits is a core network element of its cellular network.

Okay, let's go to validity in Sonera. There were two comments made during -- kind of at a higher level about invalidity in this case made about -- there was an implication that it is only Comcast's job or Nokia's job to present prior art to the patent office during the review of the patent or the patent application. So, Nokia filed the

patent application originally and again, Comcast filed for a re-examination. The patent office does its own searching. That's what you were told in this case. The patent office does it's own searching. It's not up to just the people filing for the patent applications to tell the patent office about all the prior art. And I heard a number of kind of comments that may have hinted at a notion, some sort of an implication that Comcast didn't provide Sonera to the patent office. Nokia didn't provide something of Sonera to the patent office. But it's up to the patent office to do searching. They search prior art, so I just want to make sure that's abundantly clear.

And then on this slide, before I talk about why Sonera does not anticipate the claims. On this slide -- your Honor, can I approach the --

THE COURT: You may.

MR. GOETTLE: There was discussion today that you were told that Dr. Akl took issue with drawing this box around these two components, these two elements. Dr. Akl never took issue with that. But counsel said that he took issue with it and then he showed you testimony where Dr. Akl had said last week or the week before, that it's okay to think about a messaging server in terms of the functionality, even if it's functionality spreading across two different systems. He never took issue with Dr. Polish doing this box

and counsel, when he told you that, he didn't show you any testimony from yesterday when he said that that happened. He didn't show you any testimony where Dr. Akl actually did take issue with that. He never did.

Okay and now about Sonera, here's the rub in Comcast's view as to all of the prior art. Here's the rub. The rub is this, in both Sonera and the other reference that we're talking about, Viaresto, this is the component that's sending the inquiry, the SMS-GMSC. MSC here at the end, it is undisputed in this case, that's a mobile switching center, a core network element of a GSM network. This patent is talking in terms of the GSM network. This is a core network element of a GSM network. This Number 1 coming down, that's the inquiry. The claim requires sending an inquiry from a messaging server, the messaging server external to the cellular network. This is inside the cellular network, this is how the GSM networks worked in the prior art. It was the SMS-GMSC that sent an inquiry for information about the phone. This is an, you can think of it as an internal inquiry. It's not coming from outside the network in. It's inside the network.

So, Dr. Akl is not taking an issue with drawing this box around it. What he's taking an issue with is this notion that this query is from outside the cellular network. It's not. And to be honest with you, I listened to Dr. Polish, I

don't even think he's saying otherwise. What Dr. Polish is saying is, yeah, well, okay fine. But it would have been known that you could put the query from here. You could have the query coming from this stored forward component that's not a core network element. He's saying you could know this -- a skilled artisan would have known that you could put the inquiry here.

Anticipation requires that a single reference disclose each and every limitation of the claim. That's a requirement of anticipation, you're going to here that in the instructions today. It's a requirement. Sonera nowhere teaches that you can have this inquiry coming from this SMSC. Never says it. Dr. Polish didn't point to anything that said that.

And now for this notion that, well, maybe it would have been obvious that you had. As Dr. Akl explained, you could think of this as a recipe. A recipe for baking a cake, your grandmom's best cake is going to use the same ingredients as other cakes probably. It's very common, right? But it's all in the mixing, it's all in the matching. What you're not allowed to do in an obviousness analysis, look at the claim first and then go to the prior art and mix and match different pieces of the prior art and say, oh, I got it. I got all the limitations here except for one. I got it over here in this one. If I put them together I have

the claimed invention.

That's all hindsight and Judge Dubois is going to instruct that hindsight is not an obviousness analysis. It is impermissible to perform hindsight in an obvious analysis. What you're supposed to do is look at these two pieces of prior art and see if there is a reason for a skilled artisan to put them together. Is there a reason for grandmom to use sour cream and butter? Is there a reason to do it? Not was it known in the prior art that you could use sour cream and butter in a cake and I'll probably lay out that I'm not much of a baker. I imagine that you don't put sour cream in a cake, but there has to be reason to put them together. It's not enough that the elements individually are known. Is there a reason to put them together? Dr. Polish gave you no reason for why it would somehow improve Sonera to move this inquiry function to this box. None, not invalid. Not clear and convincing. Does not provide an abiding conviction, that's the standard Judge Dubois is going to present to you. It's an abiding conviction that Sonera discloses the elements, either alone or in combination with the other arts. There's no abiding conviction.

Which reminds me, the other big point I wanted to make, Comcast is not resting on its laurels in this invalidity case because the patent got re-examined. That's what counsel for Sprint told you. We're not resting on our

laurels, we're not telling you, you should just knock off Sonera because the patent got re-examined. What I'm telling you, what Comcast is telling you, what Dr. Akl told you, is Sonera doesn't anticipate because the inquiry is inside. And there's no reason why this would somehow be improved by having the inquiry be put here. There's no reason, except it's in the claim and using hindsight to get there.

And Dr. Akl had other reasons why Sonera doesn't anticipate either. Sonera is about mapping, all right, sending a text message to like a 1-800, I think if it as sending it to 1-800GetFlowers and then it gets forwarded to an employee's cellphone, that text message. That's what Sonera is about. Well, that employee's cellphone is a phone number. The claim requires mapping from an external identifier to an internal identifier. The internal identifier may, but need not be disclosed outside a cellular network. That's a claim construction term in your binder. May, but need not be disclosed outside a cellular network. Phone numbers are disclosed outside cellular networks, that's the whole purpose of having a phone. So, it doesn't meet that limitation.

And as Dr. Akl explained, the claim also requires indicating the information with the aid of said first identifier in the response message that goes back. It's just not disclosed at all in Sonera. And Dr. Polish kind of waved

his hands on that and said, it's kind of there, but it's super technical, so he didn't explain it. It doesn't present an abiding conviction of invalidity.

And just real quickly, let's go to the Viaresto, which is also 40-something. I just want to point out that Viaresto suffers the same affliction as Sonera. This is what's doing the inquiry in Viaresto. It's an internal inquiry. This is misleading. This green arrow is not an inquiry. It doesn't happen. It's not disclosed in Viaresto. That's what Dr. Akl told you. There's no disclosure in this document that there's an inquiry coming in and then something, some magic happens. Never disclosed. This, the number four is actually blocking it, but this is called an SMS gateway, which the patent describes as being SMS-GMSC. It's the same scenario as Sonera. The inquiry is from here and that's an internal inquiry. So, combining this with Sonera doesn't get you to the invention. Certainly doesn't get you to an abiding conviction of invalidity.

All right, damages, can we go back to the slide deck, over on the slide deck. At low 50s at this point. The devil is in the details, ladies and gentlemen. Ms. Riley said all of the agreements produced by Sprint in this case, are lump sum payments, that's true. And then she referred to what they are, the settlements of litigation are lump sum. The RPX and Allied Signal Trust are lump sums, as well. But

she never said they're comparable. It doesn't matter that they're in the case, the question is whether they're comparable. Are they comparable in the hypothetical negotiation? And Ms. Riley said they are not. Why? Because settlements of litigation are not comparable to the hypothetical negotiation where Sprint is saying to Nokia, we infringe, the patent is valid, we need a license, we need to come to terms right now. And in terms of these RPX and Allied Signal Trust, she explained that to you. Those are entities that you kind of subscribe to, to get access to patents or maybe to not have -- you get a license under the patent, I'll put it that way. Those are done for defensive purposes. Just like Comcast's patent strategy, they're done for defensive purposes. That's not comparable to the hypothetical negotiations that I just described.

Next slide, there's no spike. There's no skyrocketing. This is misleading. This did not happen. What happened in the hypothetical negotiation was, the parties were figuring out what the license arrangement would be between Nokia and Sprint. Dr. Cox even told you that in the hypothetical negotiations, they didn't know about the $600,000 sale price. He told you that. So, why is this misleading? Because in the hypothetical negotiations, it wouldn't go up and come back up. It would go up and keep going up, because message use kept going up. This is

misleading, there's no spike, there's no skyrocket. This is combining the hypothetical negotiation with what happened when Comcast bought the patent from Sprint, I mean, from Nokia. Two different scenarios, they don't correlate right like this. Overly simplistic and it's misleading.

And as for this, this number 2, value of two out of five as the value of the patent. Again, we have to think about what was going on in 1999? Dr. Akl explained it to you, I said it in opening, it's hard to send a text message in 1999, using cellphones that mirrored the house phones, with the numbered keypad. Hard to send an SMS message and you saw the chart that said that in the late-'90s, they didn't even measure revenue based on text messaging because it wasn't a prevalent function.

So, was it easy to design around a patent in 1999? Sure it was, because it was already known in the art that you could have external messaging servers -- internal messaging servers, excuse me. It was already known in the prior art that you could have internal messaging servers. So, without a high volume, having an internal messaging server wasn't presenting a problem. What Ms. Ahou, the inventor saw was, oh, this messaging volume could go up and we should get that messaging server as a rule, have it outside the cellular network and deal with the problems that creates through what I described earlier, through the mapping, through having the

core network elements have to contribute a little bit of effort.

But in 1999, it was easy to design around because messaging wasn't big. So, it makes sense that at that time, it was ranked two out of five. And then I'm going to conclude on this house -- misleading, overly simplistic. Here's why, it ignores the hypothetical negotiation, the terms of the hypothetical negotiation. In the hypothetical negotiation, Sprint's already in the house and Sprint's not leaving. Sprint can't go to the house next door. It can't rent a room in another town. It's got to stay in this house, that's the confines of this hypothetical negotiation.

Comcast, in 2010, could move into this house or move into another house. Could move into no house. Could walk away from buying the patent altogether. And well -- I'll leave it at that, but then when you think about the condition of Nokia again going to the burning platforms -- the burning platforms art on the Wall Street Journal that we heard about. In 2010, when Comcast bought it, the house was on fire and somebody's got to jump. That's not the case at the time of the hypothetical negotiation. Nokia was in very stable financial condition in 2005, a strong bargaining position in 2005. This is overly simplistic analysis, this analogy that just doesn't fit this case.

So, I've concluded. I think I've hit all the

points. Certainly, I hit a lot of them, all the points I wanted to make. I very much appreciate your time and attention as I said earlier. Thanks.

THE COURT: Thank you, Mr. Goettle. While you're up, Mr. Goettle, I wanted you to move that exhibit. I think what we'll do is stand up for a bit before I deliver my charge.

(Pause.)

JURY CHARGE

THE COURT: All right. I'm now going to instruct you on the law. You may, of course, take notes, but keep in mind that I will be giving you written copies of the charge. So, after I deliver it, you'll have a notebook much like mine. You'll have three notebooks. Also the charge that I will give you has a table of contents. So, if you're addressing a particular issue, either infringement or invalidity and want to see what I said about the law on those subjects and that's just by way of example, you can go to the table of contents and see what I've said on the law. Hopefully, that will answer your question, but if not, you can send me a note asking the question.

All right, now that you've heard all the evidence to be received in the trial and each of the arguments of counsel, it is my duty to give you the final instructions of the Court as to the law applicable to the case. These

instructions will guide you in your decisions. All of the instructions of law given to you by me, those given at the beginning of the case, those given to you during the trial and these final instructions, must guide and govern your deliberations.

It is your duty as jurors to follow the law as stated in all of my instructions. And to apply these Rules of Law to the facts as you find them from the evidence received during the trial. Counsel have quite properly referred to some of the applicable rules of law in their closing arguments. If you note any difference between the law as stated by counsel than as I have stated in these instructions, you should, of course, be governed by my instructions. Moreover, you are not to single out any one instruction alone as stating the law. Rather, you must consider my instructions as a whole in reaching your decision.

Neither are you to be concerned with the wisdom of any Rule of Law I cover in my instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base any part of your verdict upon any other view or opinion of the law than that given in these instructions.

Justice through trial by jury must always depend upon the willingness of each individual juror to seek the

truth from the same evidence presented to all of the jurors here in the courtroom and to arrive at a verdict by applying the same Rules of Law as I am giving you now.

Now some instructions on your duties as a jury. You have two duties. Your first duty is to decide the facts from the evidence that you have heard and seen in the courtroom. that is your job and yours alone. I play no part in finding the facts. You should not say anything I may have said or done during the trial as indicating what I think of the evidence or what I think your verdict should be.

Your second duty is to apply the law that I give you to the facts as you find the facts. You all must agree, that means your verdict must be unanimous. My role now is to explain to you the legal principles that must guide you in your decisions. You must apply my instructions carefully. Each of the instructions is important and you must apply all of them. You must not substitute or follow your own notion or opinion about what the law is or ought to be. You must apply the law that I give to you whether you agree with it or not. Whatever your verdict, it will have to be unanimous. All of you will have to agree on it or there will be no verdict.

In the jury room, you will discuss the case among yourselves, but ultimately, each of you will have to make up his or her own mind. This is the responsibility that each of

you has and you cannot avoid.

During your deliberations you must not communicate with or provide any information to anyone else by any means about the case. You may not use any electronic device or media, such as the telephone, a cellphone, a SmartPhone, IPhone, Blackberry or computer, the internet, any internet service, any text or instant messaging service, any internet chat room, blog or website such as FaceBook, MySpace, LinkedIn, Utube or Twitter to communicate to anyone any information about the case or to conduct any research about the case, until I accept your verdict. In other words, you cannot talk to anyone on the phone, correspond with anyone or electronically communicate with anyone about the case. You can only discuss the case in the jury room with your fellow jurors during deliberations.

And on that note, if any of you must absent yourself from the jury room, such as to the restrooms, you must stop deliberating and wait until that juror has returned. You must deliberate as a jury of eight. You can't deliberate in groups. You may not use electronic means to investigate or communicate about the case, because it is important that you decide the case based solely on the evidence presented in the courtroom. I must add that I have said that so many times, you can probably lecture on the duty of jurors not to do what I'm talking about and telling you, you cannot do. You are

only permitted to discuss the case with your fellow jurors during deliberations, because they have seen and heard the same evidence you have seen and heard.

In our judicial system, it is important that you are not influenced by anything or anyone outside of the courtroom. You should perform your duties as jurors fairly and impartially. Do not allow sympathy, prejudice, fear or public opinion to influence you. You should also not be influenced by any person's race, color, religion, national ancestry, gender, sexual orientation, profession, occupation, celebrity status, economic circumstances or position in life or the community.

I'm going to instruct you on burdens of proof.

In any legal action facts must be proven by a required standard of evidence known as the burden of proof. In a patent case such as this there are two different burdens of proof, the first called preponderance of the evidence, the second is called clear and convincing evidence.

This is a civil case in which Comcast is accusing Sprint of patent infringement. Comcast has the burden of proving patent infringement by what is called a preponderance of the evidence. That means Comcast has to prove -- has to produce evidence which when considered in light of all of the facts leads you to believe that what Comcast claims is more likely true than that. To put it differently, if you were to

put Comcast's and Sprint's evidence on opposite sides of the scales of justice, the evidence supporting Comcast's claims would have to make the scales tip in favor of Comcast -- ever so slightly, but they must tip in favor of Comcast for Comcast to have met its burden of proving infringement by a preponderance of the evidence.

Sprint asserts in this case that Comcast's '870 Patent is invalid. Sprint has the burden of proving that the patent in suit is invalid by clear and convincing evidence. Clear and convincing evidence is evidence that produces an abiding conviction that the truth of a factual contention is highly probable. Proof by clear and convincing evidence is thus a higher burden than proof by a preponderance of the evidence.

And as an example, if you get back to the jury room and have an issue about the proof, you can look at the table of contents, go to page 7 and there it is.

Finally on burden of proof. You may have heard of the term proof beyond a reasonable doubt. That is a stricter standard of proof than either standard I have just described and it applies only in criminal cases. It does not apply in civil cases such as this one, so you should just put it out of your mind.

Now I'm going to talk briefly about the evidence. I'm not going to review the evidence, I'm going to talk about

categories of evidence. The evidence from which you are to find the facts in this case consists of the following: one, the testimony of witnesses; two, documents and other things received as exhibits; three, any facts that are stipulated, that is formally agreed to by the parties; and any facts that are judicially noticed, that is facts I told you you must accept as true without other evidence. I don't think we have any judicial notice issues in this case.

MR. RIOPELLE: No, your Honor.

THE COURT: Well, I think Comcast agrees, yes.

MR. GOETTLE: Agreed, we would agree, your Honor.

THE COURT: The following things are not evidence: statements, arguments and questions of lawyers or the parties in the case. As I told you, it's the question and the answer taken together which constitute evidence. So if a question is asked and the witness answers no, you have to take the question and the answer together.

Objections by lawyers are not evidence. Lawyers are required to make objections if they think the question or other evidence sought to be presented to you is inadmissible under the Rules of Evidence. We haven't talked much about that, but the Rules of Evidence are pretty thick. So you cannot consider objections as evidence.

Any testimony I told you to disregard is not evidence and I think there were one or two examples of that.

And anything you may have seen or heard about the case outside the courtroom is not evidence.

You must make your decision based only on the evidence that you see and hear in court. Do not let rumors, suspicions or anything else that you have seen or heard outside of court influence your decision in any way.

You should use your common sense in weighing the evidence. Consider it in light of your everyday experience with people and events, and give it whatever weight you believe it deserves. If your experience tells you that certain evidence reasonably leads to a conclusion, you are free to reach that conclusion.

There are rules that control what can be received in evidence. When a lawyer asks a question or offers an exhibit into evidence and a lawyer on the other side thinks that it is not permitted by the Rules of Evidence, that lawyer may objection, and I mentioned that a moment ago. This simply means that the lawyer is requesting that I make a decision on a particular rule of evidence. You should not be influenced by the fact that an objection has been made and, as I told you, objections to questions are not evidence. Lawyers have an obligation to their clients to make objections when they believe that evidence being offered is improper under the Rules of Evidence and you should not be influenced by the objection or by my ruling on it. If the objection was

sustained, ignore the question; if it was overruled, treat the answer like any other answer. If you were instructed that some item of evidence is received for a limited purpose, you must follow that instruction.

Also certain testimony or other evidence may have been ordered stricken from the record and you were instructed to disregard the evidence. I mentioned this a moment ago, but if that occurred, do not consider any testimony or other evidence that was excluded by me and do not speculate about what a witness might have said or what an exhibit might have shown in that situation.

Now, there are two general categories of evidence, direct and circumstantial evidence. An example of direct evidence is when a witness testifies about something that the witness knows through his own senses, something the witness has seen, felt, touched, or heard or did. If a witness testified that he saw it raining outside and you believed him, that would be direct evidence that it was raining. Another form of direct evidence is an exhibit where the fact to be proved is its existence or current condition.

Now, the other type of evidence is circumstantial evidence. Circumstantial evidence is proof of one or more facts from which you can find another fact. An example of that, if someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that

would be circumstantial evidence from which you could conclude that it was raining outside. And direct evidence of rain would be someone who was outside in the rain who observed it and who told you about the rain.

In short, you should consider both kinds of evidence. The law makes no distinction in the weight to be given to either direct or circumstantial evidence. You and you alone are to decide how much weight to give to any evidence.

You are the sole judges of each witness' credibility or believability. You should consider each witness' means of knowledge, strength of memory, opportunity to observe, how reasonable or unreasonable the testimony is, whether it is consistent or inconsistent, whether it has been contradicted, the witness' biases, prejudices or interests, the witness' manner or demeanor on the witness stand, and all circumstances that according to the evidence could affect the credibility or believability of the testimony.

If you find the testimony to be contradictory, you must try to reconcile it if reasonably possible so as to make one harmonious story of it all, but if you cannot do this then it is your duty and privilege to believe the portions of testimony that in your judgment are most believable and disregard any testimony that in your judgment is not believable.

In determining the weight to give to the testimony of a witness, you should ask yourself whether there was evidence tending to prove that the witness testified falsely about some important fact, or whether there was evidence that at some other time the witness said or did something, or failed to say or do something, that was different from the testimony he gave at trial.

You should remember that a simple mistake by a witness does not necessarily mean that the witness was not telling the truth. People may tend to forget things or to remember other things incorrectly or inaccurately. If a witness has made a misstatement, you must consider whether it was simply an innocent lapse of memory or an intentional falsehood, and that may depend upon whether it concerns an important fact or an unimportant detail.

Moreover, the weight of the evidence to prove a fact does not necessarily depend on the number of witnesses who testify. What is more important is how believable the witnesses were and how much weight you think the testimony deserves.

Now, we've heard from a number of expert witnesses in the case. When knowledge of technical subject matter may be helpful to the jury, a person who has special training or experience in that technical field, he is a called an expert witness, is permitted to state his or her opinion on those

technical matters; however, you are not required to accept that opinion. As with other witnesses, it is up to you to decide whether to rely upon it.

In weighing expert testimony, you may consider the expert's qualifications, the reasons for the expert's opinions, and the reliability of the information supporting the expert's opinions, as well as the other factors I have previously mentioned for weighing testimony of any other witness. Expert testimony should receive whatever weight and credit you think appropriate given all of the other evidence in the case. You are free to accept or reject the testimony of experts just as with any other witness.

Now, the parties in the case have stipulated, that's a fancy legal word for agreed to certain facts, not very many. Those facts have been read to you during the trial and are as follows: first, the plaintiff is Comcast Cable Communications, LLC, a Delaware limited liability company with its principal place of business in Philadelphia, Pennsylvania. The Defendant Sprint Spectrum LP is a limited partnership organized under the laws of the State of Delaware with its principal place of business in Overland Park, Kansas.

The patent at issue in this case is U.S. Patent No. 6,885,870, entitled "Transferring of a Message." We will refer to the patent and have consistently referred to the

patent in the case as the '870 Patent.

The application for the '870 Patent, U.S. Patent Application No. 09/745, 756 was filed on December 21st, 2000 -- is that a correct date?

MR. RIOPELLE: Yes, your Honor.

THE COURT: The application named Auti Ahou as inventor and claimed priority to finish Application No. 19992783, filed on December 23rd, 1999.

Five, the '870 Patent issued on April 26th, 2005 and that is the date -- and you'll hear this later, but that is the date on which the hypothetical negotiation will take place as I instruct you on it.

Comcast -- 6, Comcast purchased the '870 Patent from Nokia Corporation on June 30th, 2010 and has owned the '870 Patent since then.

Seven, on October 4th, 2011, the Patent and Trademark Office issued an ex parte reexamination. That means only one party was involved and that was Comcast, an ex parte reexamination certificate for the '870 Patent. You must treat these facts as having been proved for the purposes of this case.

Now you've heard deposition testimony in this case. It's been read to you and you've seen videos of some deposition testimony, I'll now instruct you on how you should consider that testimony.

First, a deposition is as I have explain during the trial the sworn testimony of a witness taken before trial. The witness is placed under oath and swears to tell the truth, and lawyers for each party may ask questions.

A court reporter is present and records the questions and the answers. The deposition may also be recorded on videotape. During the trial certain testimony was presented to you through depositions that were electronically played. This testimony must be given the same consideration you would give it had the witness personally appeared in court. Like the testimony of a live witness, the statements made in the deposition are made under oath and are considered evidence that may be used to prove particular facts.

Deposition testimony is entitled to the same consideration as testimony presented by a live witness and is to be judged, insofar as possible, in the same as if the witness had been present to testify.

Now, deposition testimony was also used in another way. Deposition testimony has been read into the record, on cross-examination of certain witnesses, that testimony was used to each something the witness said during his or her testimony and is not in itself evidence.

Examples of that. When a witness on the witness stand testified to something there were several occasions

during the trial when on cross-examination the examining attorney would say "do you remember testifying at your deposition a certain on a certain date, do you remember this question and this answer." And in some cases, and it's for you to determine, the answer might have been different than the answer given by the witness to the same question on the witness stand. That type of deposition testimony, the use of that type of deposition testimony is to impeach or discredit the witness. And you can use that deposition testimony only for that purpose, to determine whether what the witness said on the witness stand was true or not, or true in part and untrue in part.

And finally on this issue, you may rely on deposition testimony used to impeach a witness to judge the credibility or believability of the witness' testimony.

Now, during the course of the trial you've seen many exhibits and many of these exhibits were admitted as evidence, you will have these admitted exhibits in the jury room for your deliberations.

And what we're going to do, we're going to present them to you in cartons and because looking at a carton of exhibits is not going to be very helpful, we're going to give you exhibit lists, one for Comcast and one for Sprint, and hopefully you'll be able to find an exhibit that you might want to see by hopefully two exhibit lists. Also you might

have taken notes as to certain exhibit numbers and the exhibits will be arranged in chronological order.

Now, those are exhibits received in evidence. Other exhibits, including charts and animations presented by the attorneys and witnesses, including the slides that were used during the testimony of the expert witnesses, were offered to help illustrate the testimony of the various witnesses and exhibits received as evidence. These illustrations are called demonstrative evidence, demonstrative exhibits. They've been received by the Court, but have not been admitted as evidence and should not be considered as evidence. Rather, it is the underlying testimony of the witnesses and the exhibits admitted in evidence that are the evidence in the case.

Now, with respect to the slides, it's what the witness said on the witness stand and not the slides themselves which are the evidence. The slides are being given to you to better interpret the evidence, but if you discover or if you conclude there's a disparity, a difference between what is shown on the slides and what the witness testifies to, it's the testimony of the witness that is the evidence and not what appears on the slides.

Now, I've been asked to mention one other thing with respect to the slides. Several of the expert witnesses marked documents, and I think this was mostly Sprint

documents, but some of the Sprint experts might have marked Comcast documents And the parties have added to the slides an explanation of what the expert witness added to the original document.

As an example, if a Comcast witness took a Sprint document and did something with it, changed something, that will be explained on the document and on the slide. You have not seen these changes -- no, changes is not the way to describe what they did. You will not see these markings or these explanations, I guess would be the better way to put it, on the slides. But consider that there's not an intentional changing of the underlying exhibits, just an explanation by the expert witness that this was not on the original document on which I relied. That should be self-explanatory. I have not seen these explanations, but as with everything else I'm telling you, if you get back to the jury room, look at one of these, having a question about it, have the foreperson submit that question to me and we'll answer it.

Keep in mind with respect to demonstrative exhibits that it is the underlying evidence and not the demonstrative exhibit that is the evidence in the case and if you note a difference between the two, you should rely on the underlying evidence and not on the demonstrative exhibit.

Now, you may use notes taken during the trial to

assist your memory; however, you should use caution in consulting your notes. There is always a tendency to attach undue importance to matters that you have written down. Some testimony that is considered unimportant at the time presented and thus not written down takes on greater importance or might take on greater importance later on in the trial in light of all the other evidence presented. Therefore, you are instructed that your notes are only a tool to aid your own individual memory. The notes are for your own personal use. You should not share your notes with other jurors or compare notes with other jurors in determining the content of any testimony or in evaluating the importance of any evidence. Your notes are not evidence and are by no means a complete outline of the proceedings or a list of the highlights of the trial. Above all, your memory should be the greatest asset when it comes time to deliberate and render a decision in the case.

Those are my general instructions and now I'm going to talk about the claims and defenses of the parties.

I will now review for you the parties in this action and the positions that you will have to consider in reaching your verdict. I will then provide you with detailed instructions on what each side must prove to win on each of its contentions.

This case is an action for patent infringement

arising under the patent laws of the United States. As I previously told you, the plaintiff in the case is Comcast, the defendant in the case is Sprint. Comcast is the owner of the '870 Patent that is the subject of this case and I'm going to refer to that in my instructions by its last three numbers as the '870 Patent.

I will now instruct you more fully on the issues you must address in the case. First a summary of the contentions of the parties. After I talk about the parties' contentions, I will provide you with more detailed instructions on what each side must prove to prevail on each of its contentions.

First, Comcast seeks money damages from Sprint for allegedly infringing the '870 Patent by using methods that Comcast argues are covered by Claims 1, 7 and 113 of the '870 Patent. These are referred to as the asserted claims of the '870 Patent. The methods that are alleged to infringe are Sprint's text messaging, which has been referred to as short messaging service or SMS, and Sprint's multimedia messaging, which has been referred to as multimedia messaging service or MMS.

Sprint denies that it has infringed the asserted claims of the '870 Patent. In addition, Sprint asserts that the claims relied on by Comcast, Claims 1, 7 and 113, are invalid because they are anticipated by prior art, that is they are not new and because they would have been obvious at

the time of the invention to a person of ordinary skill in the art.

Your job is to decide whether Sprint has infringed the asserted claims of the '870 Patent and whether any of the asserted claims of the '870 Patent are invalid. If you decide that any claim of the '870 Patent has been infringed and is not invalid, you must decide the amount of any money damages to be awarded to Comcast to compensate it for the infringement.

Now I'm going to talk about patent claims. Before you can decide many of the issues in the case you will need to understand the role of patent claims. The patent claims are the numbered sentences at the end of each patent. The claims are important because it is the words of the claims that define what a patent covers. The figures and text in the rest of the patent provide a description and/or examples of the invention and provide a context for the claims, but it is the claims that define the breadth of the patent's coverage.

Each claim is effectively treated as if it were a separate patent and each claim may cover more or less than another claim. Therefore, what a patent covers depends in turn on what each of the claims cover. And again we're talking about three claims, 1, 7 and 113.

You will first need to understand what each claim

covers in order to decide whether or not there is infringement of the claim and to decide whether or not the claim is invalid. The law provides that it is my role to define the terms of the claims and it is your role to apply my definitions to the issues that you are asked to decide in the case. Therefore, as I explained to you at the start of the case, I have determined the meaning of the claims and I have provided to you my definitions of certain claim terms which are found in your jury notebooks, they're the white binders that you've had during the trial.

You must accept my definitions of these words in the claims as being correct. It is your job to take these definitions and apply them to the issues that you are deciding, including the issues of infringement and validity.

Why don't we stand up? I'm about to talk about something else. Take a stand-up and I can rest my voice.

(Pause.)

THE COURT: All right, we can get back to work.

I will now explain to you how a claim defines what it covers. A claim sets forth in words a set of requirements. Each claim sets forth its requirements in a single sentence. If a device or method satisfies each of these requirements, then it is covered by the claim. There can be several claims in a patent, each claim may be narrower or broader than another claim by setting forth more or fewer

requirements.

The coverage of a patent is assessed by claim by claim. In patent law the requirements of a claim are often referred to as claim elements or claim limitations. When a thing such as a product or a method meets all of the requirements of a claim, the claim is said to cover that thing and that thing is said to fall within the scope of the claim. In other words, a claim covers a product or method where each of the claim elements or limitations is present in that product or method.

Sometimes -- I'm smiling as I read it -- sometimes the words in a patent claim are difficult to understand and therefore it is difficult to understand what requirements these words impose. It is my job to explain to you the meaning of the words in the claims and the requirements these words impose. And as I just instructed you, there are certain specific terms that I have defined and you are to apply the definitions that I provide to you.

By understanding the meaning of the words in the claim and by understanding that the words in the claim set forth requirements that a product or a method must meet in order to be covered by that claim, you will be able to understand the scope of the coverage for each claim. Once you understand what each claim covers, then you are prepared to decide the issues that you will be asked to decide, such

as infringement and invalidity.

Now, there are two types, two different types of claims in the patent that you will have to consider. The first type is called an independent claim. An independent claim does not refer to any other claim of the patent; an independent claim is read separately to determine its scope. On the other hand, a dependent claim refers to at least one other claim in the patent and thus incorporates whatever that other claim says. Accordingly, to determine what a dependent claim covers you must read both the dependent claim and the claim or claims to which it refers.

Now, in this case the independent claim is Claim 1 and the dependent claims -- well, let me read it. For example, Claim 1 of the '870 Patent is an independent claim. You know this because this claim mentions no other claim. Accordingly, the words of this claim are read by themselves in order to determine what the claim covers. Claim 7, on the other hand, is a dependent claim and refers to Claim 1. Accordingly, the words of Claims 1 and 7 must be read together in order to determine what Claim 7 covers.

Claim 113 is also a dependent claim and it refers to Claim 112. Accordingly, the words of Claims 112 and 113 must be read together in order to determine what Claim 113 covers.

I will now explain to you the meaning of some of the words of the claims in this case. In doing so I will explain

some of the requirements of the claims. As I have previously instructed you, you must accept my definitions of these words in the claims as correct. For any words in the claim for which I have not provided you with a definition you should apply their common meaning. You should not take my definition of the language of the claims as an indication that I have a view regarding how you should decide the issues that you're being asked to decide such as infringement and invalidity. These issues are for your -- are yours to decide.

Now, here are my definitions and they're the same definitions that you have in the white binders that you've been given.

First, a cellular network. I defined a cellular network as follows: a cellular network means a network comprised of a wireless terminal, a base station system for communicating with the wireless terminal, and core network elements which may include subscriber databases such as a home location register, mobile switching stations, packet switching nodes, and messaging servers.

MR. RIOPELLE: Your Honor, I think you misread the mobile switching -- it's supposed to be mobile switching centers, not mobile switching stations.

THE COURT: I think I did. I'll start that definition again.

A cellular network means a network comprised of a wireless terminal, a base station system for communicating with the wireless terminal, and core network elements which may include subscriber databases such as a home location register, mobile switching centers, packet switching nodes, and messaging servers.

Second definition. A messaging server means a server that has functionality for storing and forwarding messages and for sending an inquiry for information relating to a wireless terminal.

The third definition. A specific identifier external to the cellular network means a specific identifier used outside and inside the cellular network to identify a specific wireless terminal.

Next I defined an internal identifier. An internal identifier of the cellular network means an identifier used inside the cellular network to identify a specific wireless terminal which may, but need not be revealed outside the cellular network.

And finally, the last of my claim construction, the phrase "with the aid of a first identifier" means with the aid of the first identifier where the first identifier may, but need not be included in the response message.

Now, each of these terms that I've just defined or construed for you are found in the claims that are at issue

in this case, Claims 1, 7 and 113. And so if you come across that language in the claims, you will get the definitions by referring to this part of the charge.

Now I'm going to talk about infringement. I will now instruct you how to decide whether or not Sprint has infringed the asserted claims of the '870 Patent.

Infringement is assessed on a claim-by-claim basis; therefore, there may be infringement as to one claim, but no infringement as to another. In this case Comcast has alleged that Sprint infringes Claims 1, 7 and 113 of the '870 Patent. In order to prove infringement, Comcast must prove that the requirements for infringement are met by a preponderance of the evidence, that is it is more likely than not that all of the requirements for infringement have been proved starting on February 17th, 2006.

In order to prove infringement, Comcast must prove by a preponderance of the evidence, i.e. that it is more likely than not that Sprint used within the United States a method that meets all of the requirements of a claim. You must compare the method with each and every one of the requirements of a claim to determine whether all of the requirements of that claim are met.

You must determine separately for each asserted claim whether or not there is infringement. There is one exception to this rule. If you find that a claim on which

other claims depend is not infringed, there cannot be infringement of any dependent claim that refers directly or indirectly to that independent claim. On the other hand, if you find that an independent claim has been infringed, you must still decide separately whether the process meets additional requirements of any claims that depend from the independent claim; thus, whether those claims have also been infringed. A dependent claim includes all of the requirements of any of the claims to which it refers plus additional requirements of its own.

That concludes my instruction on infringement and now I'm going to talk about invalidity.

Sprint asserts that the claims aren't valid, again Claims 1, 7 and 113, because they are anticipated by prior art, that is they are not new, and because -- two, and because they would have been obvious at the time of the invention to a person of ordinary skill in the art.

I will now instruct you on the rules you must follow in deciding whether or not Sprint has prove that Claims 1, 7 and 113 of the '870 Patent are invalid.

To prove that any claim of a patent is invalid, Sprint must persuade you by clear and convincing evidence. You must be left with a clear conviction that the claim is invalid.

Now, I've referred to the term prior art in

addressing the issue of invalidity. Prior art may include items that were publicly known, or that may have been used or offered for sale, or references such as publications or patents, that disclosed the claim -- that disclosed the claimed invention or elements of the claimed invention. To be prior art, the item or reference must have been made, known, used, published, or patented before December 23rd, 1999, the priority date of the '870 Patent.

Now, there are two issues that you must address in deciding invalidity, the first is referred to as anticipation. In order for someone to be entitled to a patent, the invention must actually be new. For a claim of a patent to be invalid because it is not new, all of the requirements of that claim must be present in a single previous device or method that was known of, used or described in a single previous printed publication or patent. We call these things anticipating prior art.

To anticipate the invention, the prior art does not have to use the same words as the claim, but all of the requirements of the claim must have been disclosed, either stated expressly or implied to a person having ordinary skill in the art in the technology of the invention, so that looking at that one reference that person could make and use the claimed invention.

Sprint contends that Claims 1, 7 and 113 of the

patent, the '870 Patent, are invalid because the claimed inventions are anticipated. Sprint must convince you of this by clear and convincing evidence and that means that the evidence highly probably demonstrates that the claims are invalid.

The claimed inventions of the '870 Patent, Claims 1, 7 and 113, are not new if the inventions were already patented or described in a printed publication anywhere in the world before the priority date of the '870 Patent, December 23rd, 1999. Anticipation must be determined on a claim-by-claim basis.

Now, the second issue that you must decide in ruling -- in reaching a verdict, rather, on Sprint's claims of invalidity is referred to as obviousness. Even though a certain patent claim may not have been identically disclosed or described before it was made by an inventor, in order to be patentable the asserted patent claim must also not have been obvious to a person of ordinary skill in the art in the field of technology of the patent at the time the invention was made.

Sprint may establish that a patent claim is invalid by showing by clear and convincing evidence that the asserted patent claim would have been obvious to persons having ordinary skill in the art at the time the invention was made in the field of the invention. In determining whether a

claimed invention is obvious, you must consider the level of ordinary skill in the field of the invention that someone would have had at the time of the invention, at the time the invention was made, the scope and content of the prior art and any differences between the prior art and the claimed invention.

Keep in mind that the existence of each and every element of the claimed invention in the prior art does not necessarily prove obviousness. Most, if not all, inventions rely on building blocks of prior art. In determining whether a claimed invention is obvious, you may, but are not required to find obviousness if you find that at the time of the claimed invention there was a reason that would have prompted a person having ordinary skill in the field of the invention to combine the known elements in a way the claimed invention does, taking into account such factors as whether the claimed invention was merely the predictable result of using prior art elements according to their known functions; two, whether the claimed invention provides an obvious solution to a known problem in the relevant field; three, whether the prior art teaches or suggests the desirability of combining elements claimed in the invention; four, whether the prior art teaches a way from combining elements in the claimed invention; five, whether it would have been obvious to try the combinations of elements such as when there is a design need or market

pressure to solve a problem, and there are a finite number of identified predictable solutions; and, six, whether the change resulted more from design incentives or other market forces.

To find it rendered the invention obvious you must find that the prior art provided a reasonable expectation of success. In determining whether the claimed invention was obvious, consider each claim separately and do not use hindsight, that means consider only what was known at the time of the invention.

Now, I've used the term person of ordinary skill in the art. In deciding what the level of ordinary skill in the field of the invention is you should consider all the evidence introduced at trial including, but not limited to, one, the levels of education and experience of the inventor and other persons actively working in the field; two, the types of problems encountered in the field; three, prior art solutions to these problems; four, rapidity with which innovations are made; and, five, the sophistication of the technology.

Now I have a final instruction on obviousness. In considering whether the claimed invention was obvious you must determine the scope and content of the prior art. The scope and content of the prior art for deciding whether the invention was obvious includes at least prior art in the same

field as the claimed invention. It also includes prior art from different fields that a person of ordinary skill in the art would have considered when trying to solve the problem that is addressed by the invention. Where the party challenging the validity of the patent is relying on prior art that was not considered by the Patent & Trademark Office joining that examination

You may consider whether that prior art is significantly different and more relevant than the prior art that the Patent & Trademark Office did consider. If you decide it was different and more relevant, you may weigh that prior art more heavily when considering whether Sprint has carried its clear and convincing burden of proving invalidity.

Now I'm going to talk on damages. If you find that Sprint has infringed any valid claim of the '870 Patent, you must then consider what amount of damages to award Comcast. I will now instruct you about the measure of damages.

By instructing you on damages, I am not suggesting which party should win the case on any issue. If you find that Sprint has not infringed, any valid claims of the patent then Comcast is not entitled to any damages.

The damages you award must be adequate to compensate Comcast for the infringement, they are not meant to punish an infringer. Your damages award, if you reach this issue,

should put Comcast in approximately the same financial position that it would have been in had the infringement not occurred.

Comcast has the burden to establish the amount of its damages by a preponderance of the evidence. In other words, you should award only those damages that Comcast establishes that it more likely than not suffered. While Comcast is not required to prove the amount of its damages with mathematical precision, it must prove them with reasonable certainty. You may not award damages that are speculative, damages that are only possible or damages that are based on guesswork.

In this case Comcast seeks a reasonable royalty. A reasonable royalty is defined as the amount of money Nokia and Sprint would have agreed upon as a fee for use of the invention at the time prior to when infringement began. You must be careful to ensure that award is no more or no less than the value of the patented intention. I will give you more detailed instructions regarding damages shortly; note, however, that Comcast is entitled to recover no less than a reasonable royalty for each infringing act.

Now I'm going to define reasonable royalty. A royalty is a payment made to a patent holder in exchange for the right to make, use or sell the claimed invention. A reasonable royalty is the amount of royalty payment that a

patent holder and the alleged infringer would have agreed to in a hypothetical negotiation taking place at a time prior to when the infringement began.

In this case the hypothetical negotiation would have occurred on April 26th, 2005 and the parties to the hypothetical negotiation would have been Nokia as the then-patent holder or owner and Sprint. In considering this hypothetical negotiation, you should focus on what the expectations of Nokia and Sprint would have been and they entered into an agreement at that time and the patent, had they acted in reasonably in their negotiations.

In determining this, you must assume that both parties believed the patent was valid and infringed and that both parties were enter -- were willing to enter into an agreement. The reasonable royalty you determined must be a royalty that would have resulted from the hypothetical negotiations and not simply a royalty either party would have preferred.

Evidence of things that happened after the infringement first began can be considered in evaluating the reasonable royalty only to the extent that the evidence aids in assessing what royalty would have resulted from the hypothetical negotiation, although evidence of the actual profits an alleged infringer made may be used to determine the anticipated profits at the time of the hypothetical

negotiation. The royalty may not be limited or increased based on the actual profits the alleged infringer made.

The reasonable royalty award must be based on the incremental value that the patented method adds to the overall process. When the accused methods have both patented and un-patented features measuring this value requires a determination of the value added by the patented method or methods that were infringed.

Now, there are a number of factors that you can consider in determining the amount of a reasonable royalty. First, you should consider all of the facts known and available to the parties at the time of the hypothetical negotiation on April 26th, 2005. Some of the kinds of factors that you may consider in making your determinations are, and there are a number of factors and you'll have them all in my charge, they're referred to as the Georgia-Pacific factors because they were first enunciated in a case involving Georgia-Pacific as a party and these factors are as follows. One, the value that the claimed invention contributes to the accused product; two, the value that factors other than the claimed invention contribute to the accused product; three, comparable license agreements such as those covering the use of the claimed invention or a similar technology,

In analyzing the factors I have just referenced, you

may consider the following. One, the royalties received by the patentee for the licensing of the patent in suit proving or tending to prove an established policy; two, the rates paid by the licensee for the use of other patents comparable to the patent in suit; three, the nature and scope of the license -- let me read that again -- three, the nature and scope of the license as exclusive or non-exclusive or as restricted or non-restricted in terms of territory or with respect to whom the manufactured product may be sold; four, the licensors established policies and marketing program to maintain his or her patent monopoly by not licensing others to use the invention or by granting licenses under special conditions designed to preserve that monopoly; five, the commercial relationship between the licensor and licensee such as whether they are competitors in the same territory, in the same business, or whether they are inventor and promoter; sixth, the effect of selling the un-patented specialty in promoting sales of other products of the licensee, the existing value of the invention to the licensor as a generator of sales of his non-patented items and the extent of such derivative or conveyed sales; seven, the duration of the patent and the terms of the license; eight, the established profitability of the product made under the patents its commercial success and it's current popularity; nine, the utility and advantage of the patent property over

the old modes or devices, if any, that have been used for working out similar results; ten, the nature of the patented invention, the character of the commercial embodiment of it as owned and produced by the licensor and the benefit to those who have used the invention; 11, the extent to which the infringer has made use of the invention and any evidence probative of that value; and the 12th factor the parties determined was not applicable in the case, so it's not referenced; 13, the portion of the realizable profits that should be credited to the invention as distinguished from the non-patented elements, the manufacturing process, business risks or significant features or improvement added by the infringer; 14, the opinion and testimony of qualified experts; 15, the amount that a licensor such as the patentee, that's the patent owner, and a licensee such as the infringer would have agreed upon the time the infringement began, if both had been reasonably and voluntarily trying to reach an agreement, that is the amount which a prudent licensee who desired as a business proposition to obtain a license to manufacture and sell a particular article embodying the patented invention would have been willing to pay as a royalty and yet be able to make a reasonable profit, and which amount would have been acceptable by a prudent patentee or patent owner who was willing to grant a license.

No one factor is dispositive and you can and should

consider the evidence that has been presented to you in this case on each of these factors. You may also consider any other factors which in your mind would have increased or decreased the royalty Sprint would have been willing to pay and Nokia would have been willing to accept acting as normally prudent business people.

Now, how do you calculate a reasonable royalty? A reasonable royalty can be calculated in different ways and it is for you to determine which way is the most appropriate based on the evidence you've heard. One way to calculate a reasonable royalty is to determine what is called an ongoing royalty.

To calculate an ongoing royalty you must determine the royalty rate that would have resulted from the hypothetical negotiation. The royalty rate would be a fixed amount of money per SMS message and/or a fixed amount of money for MMS message, then you would multiply the royalty rate by the actual number of infringing SMS and/or MMS messages to determine the total sum of an ongoing royalty.

Another way to calculate a royalty is to determine a one-time lump-sum payment that the infringer would have paid at the time of the hypothetical negotiation. This one-time lump-sum payment would be for a license covering all infringing SMS or MMS messages through the life of the '870 Patent. This differs from payment of an ongoing royalty

because with an ongoing royalty the licensee pays based on the actual number of infringing SMS and/or MMS messages. When a one-time lump sum is paid the infringer pays a single price for a license covering both past and future infringing sales.

It is up to you based on the evidence presented to decide the appropriate method for calculating the reasonable royalty.

Damages in a patent infringement case are limited by law to a period of six years before the filing of the lawsuit. In this case Comcast filed its lawsuit against Sprint on February 17th, 2012; therefore, the earliest date of commencement for damages that Comcast may obtain against Sprint is February 17th, 2006.

Now my final instructions on deliberations. When you retire to the jury room to deliberate you may take with you these instructions, your notes and the exhibits that I have received in evidence. You should select one member of the jury as your foreperson. That person will preside over the deliberations and speak for you here in open court.

You have two main duties as jurors. The first one is to decide what the facts are from the evidence that you have heard and seen here in court. Deciding what the facts are is your job, not mine, and nothing that I may have said or done during the trial was meant to influence your decision

about the facts in any way. Your second duty is to take the law that I give you, that I have just given you, and apply it to the facts and decide if under the appropriate burden of proof the parties have established their claims.

It is my job to instruct you about the law and you are bound by the oath you took at the beginning of the trial to follow my instructions even if you personally disagree with them, this includes the instructions that I gave you before the trial, during th trial and these final instructions, all of the instructions are important and you are to consider them together as a whole.

Perform these duties fairly. Do not let any bias or sympathy or prejudice that you may feel toward any one side or the other influence your decision in any way.

As jurors you have a duty to consult with each other and to deliberate with the intention of reaching a verdict. Each of you must decide the case for yourself, but only after a full and impartial consideration of all the evidence with your fellow jurors. Listen to each other carefully. In the course of your deliberations you should feel free to reexamine your own views and to change your opinion based on the evidence, but you should not give up your honest convictions about the evidence just because of the opinions of your fellow jurors, nor should you change your mind just for the purpose of obtaining enough votes for a verdict.

When you start deliberating, do not talk to the jury officer. There will be someone in attendance outside the jury room. Do not talk to me or to anyone else other than each other. During your deliberations you must not communicate with or provide any information to anyone by any means about this case. You may not use any electronic device or media such as cell phone, smartphone, Blackberrys or iPhones or computers, the Internet, any Internet service, or any text or instant-messaging service such as Twitter or any Internet chat room, blog, Web site or social networking service, such as Facebook, MySpace -- I've mentioned these earlier in the charge -- Linked In, You Tube, to communicate to anyone any information about the case or to conduct any research about the case, and you may do that until after I accept your verdict.

You may not use these electronic means to investigate or communicate about the case, because it is important that you decide the case based solely on the evidence presented in the courtroom. Information on the Internet or information available through social media might be wrong, incomplete or accurate; information that you might see on the Internet or on social media has not been admitted to evidence and the parties have not had a chance to discuss it with you.

You should not seek or obtain information and it

must not influence your decision in this case. If you have any questions or messages for me, you must write them down on a piece of paper, have the foreperson sign them, and give them to the person in attendance outside of the jury room. That person will give them to me and I will respond as soon as I can. In most cases, probably in all cases, I'll walk to talk about your notes with Counsel, so it might take me some time to get back to you.

On more thing about messages. Never write down or tell anyone how you stand on your votes. In other words, if you voted and you're four-four or however you're decided, that's for you to know, you're not to sure that with any of us.

Your verdict must represent the considered judgment of each of you and in order for you as a jury to return a verdict must agree on the verdict, each juror must agree on the verdict and your verdict -- that means your verdict must be unanimous.

A form of verdict has been prepared for you. It has a series of questions for you to answer. You're to take this form to the jury room and when you've reached unanimous agreement as to your verdict it should be filled in, your verdict form should be filled in by your foreperson, signed by the foreperson and dated, and then you will return to the courtroom and your foreperson will present your verdict.

Unless I direct you otherwise, do not reveal your answers until you are discharged.

After you've reached a verdict you are not required to talk to anyone about the case, although you might want to talk to other people. And I think I will explain that again after you reach a verdict. I have some instructions I'll give you on that issue. But for now -- Michael? -- I'm going to give you a copy of the verdict sheet. Counsel has referred to it and I'm going to cover what is set forth in the verdict sheet. It's not Michael, it's Milahn.

(Pause.)

THE COURT: Do the two of you have one? Okay.

The first question deals with infringement and it asks the question, "Did Comcast prove by a preponderance of the evidence that Sprint has infringed any of the following claims of the '870 Patent by providing SMS and MMS messaging through messaging servers other than Syniverse Picture Mail?"

A yes is a finding for Comcast, a no is a finding for Sprint.

Now, if you've answered no to all of the claims, and you'll see that you have to answer yes or no for each of the three claims, if you've answered no to all of the claims, then you have concluded your deliberations, and your foreperson should sign and date the verdict slip on page 4 and notify the court officer.

If you've answered yes to any claim in Question 1, you go to Question 2 and Question 3. And those questions deal with Sprint's affirmative offense of invalidity.

Question 2 reads as follows: "Did Sprint prove by clear and convincing evidence that any of the following claims of the '870 Patent are invalid as anticipated by a single prior art reference?"

A yes is a finding for Sprint, a no is a finding for Comcast. That question addresses the issue of anticipation. And then you have to answer yes or no for each of the three claims at issue in the case, Claims 1, 7 and 113.

And then you go to Question 3, which addresses the issue of obviousness. Question 3 reads: "Did Sprint prove by clear and convincing evidence that any of the following claims of the '870 Patent are invalid as obvious at the time of the invention to a person of ordinary skill in the art?"

A yes is a finding for Sprint, a no is a finding for Comcast. And again there's -- the three claims are listed and you have to answer yes or no.

The instructions at the bottom of page 3: "You proceed to Question 4 if you have found any infringed claim not to be invalid," i.e. a no answer for both Question 2 and Question 3 as to any infringed claim, and the infringed claims, if any, are decided by your answer to Question 1.

"Your deliberations are concluded if you have found

that all infringed claims are invalid," that means a yes for Questions 2 -- Question 2 or Question 3, or both, with respect to each claim for which you answered yes for Question 1. Your foreperson should then sign and date the verdict sheet on page 4 and notify the court officer.

And following those instructions, if you get to page, the damages section. Question 4 reads: "What sum of money, if any, do you find that Comcast has proven by a preponderance of the evidence is adequate to compensate Comcast for Sprint infringement of the '870 Patent?" And there's a line and you fill in an appropriate figure.

And then Question 5 addresses the issue of the form of any royalty that you find and the question asks, "Is the sum of money identified in your answer to Question 4," and you have to check one, the first choice is "the total sum of an ongoing royalty for messages sent or received through September 30th, 2016," and the second choice, "a one-time lump-sum royalty for the life of the '870 Patent."

Now, a word about that date, September 30th. Sprint provided Comcast with evidence of -- well, financial documents would be the best way to describe it -- through September 30th, 2016, and that's why that date is inserted in connection with an ongoing royalty.

And finally, the final instructions, your deliberations are concluded if you get to this point and

after the verdict form is completed, in accordance with the instructions, the foreperson should sign and date the form and should notify the person in attendance outside the jury room.

All right. Now, Ms. Hull, I want you to collect all but one of those verdict sheets. We'll leave you with one verdict sheet.

I must go to sidebar and see if Counsel have any comments on the charge.

(Sidebar discussion held as follows:)

THE COURT: Pardon me?

MR. GOETTLE: Jason has our objections.

THE COURT: Comcast first.

MR. HOFFMAN: Thank you, your Honor. On behalf of Comcast, we respectfully object to the claim interpretation instruction --

THE COURT: Pardon me?

MR. HOFFMAN: To the claim interpretation instruction.

MR. GOETTLE: The claim ct.

MR. HOFFMAN: Claim construction instruction --

THE COURT: All right.

MR. HOFFMAN: -- your claim construction instruction on page 23.

THE COURT: All right.

MR. HOFFMAN: And specifically Comcast objects to the constructions of cellular network and messaging server as inconsistent with the constructions proposed and the arguments made in Docket Nos. 267 and 278.

THE COURT: On which I've already ruled.

MR. HOFFMAN: Correct, but we're doing this to preserve the record for any appeal.

THE COURT: Absolutely. And my response to that objection is as set forth in my rulings.

MR. HOFFMAN: Thank you, your Honor. And in addition Comcast objects to the construction for a specific identifier external to the cellular network and the construction for an internal identifier of the cellular network as inconsistent with the constructions and the arguments supporting those constructions as set forth in Docket Nos. 84 and 101.

THE COURT: And I've ruled on those issues before and my ruling stands. Your objections to the charge are overruled on the grounds set forth in my rulings when those issues were first presented.

MR. HOFFMAN: In addition, your Honor, we object on page 34 of your instructions with respect to the reasonable royalty definition. We object to the instruction of "The reasonable" -- at the bottom -- "The reasonable royalty award must be based on the incremental value and the patented

method adds to the overall process when the accused methods have been both patented and un-patented features. Measuring this value requires a determination of the value added by the patented method." These are -- we believe these to be redundant of the Georgia-Pacific factors 11 and 13, and as a result they provide additional emphasis that we believe is prejudicial.

THE COURT: I addressed that during the charging conference, I don't need to hear from Sprint on that issue. It's a correct statement of the law and I thought because there were so many Georgia-Pacific factors, many of which I do not believe, notwithstanding what might have been said in the expert reports of the damages experts, many of them were inapplicable and I was concerned about not -- about the possibility that the jury might not understand the significance of apportionment, particularly in view of the recent Supreme Court decision in Apple v. Samsung.

MR. HOFFMAN: Thank you, your Honor.

THE COURT: Fine.

MR. RIOPELLE: Thank you, your Honor. Sprint objects also on the claim interpretation, which I believe is on page 23 -- I have it on page 20 of mine (indiscernible) but --

THE COURT: Comcast has objected to all of my claim construction, that might be a record.

MR. RIOPELLE: Well, the Federal Circuit says we have to do this. So --

THE COURT: Yes.

MR. RIOPELLE: -- Sprint objects to the definitions of messaging server, a specific identifier external to the cellular network and an internal identifier of the cellular network, for the reasons stated in previous briefing in this case.

THE COURT: And my ruling is the same.

MR. RIOPELLE: Sprint's one other objection, your Honor, your obviousness instruction.

THE COURT: Yes.

MR. RIOPELLE: Sprint objects to the extent the instruction omits ABL (ph) Model Jury Instruction 5.3, it addresses the higher the level of ordinary skill the easier it may be to establish obviousness, specifically --

THE COURT: I have that annotated here, but not marked.

(Pause.)

MR. RIOPELLE: I think it's on page 27 of the annotated (indiscernible) --

THE COURT: Yes -- no, it's not here. It's out of this version, but I know the instruction to which you're referring.

MR. RIOPELLE: I can read it into the record, if

you'd like me to.

THE COURT: Well, it's the instruction that talks about the higher the level of education --

MR. RIOPELLE: Of ordinary skill.

THE COURT: -- of ordinary skill, the easier it is to leave the burden on Sprint to create (indiscernible) --

MR. RIOPELLE: Obviousness.

THE COURT: I'm sorry, obviousness by clear and convincing evidence. And I've considered that and stated during the charging conference that I did not think it was appropriate to charge on that issue.

MR. RIOPELLE: Thank you, your Honor.

THE COURT: I had another issue regarding obviousness. I don't -- there are two arguments with respect to obviousness, one is Senara -- am I pronouncing that properly?

UNIDENTIFIED SPEAKER: You are, your Honor.

THE COURT: When considered together --

MR. HANGLEY: No, it's pronounced Woppanami (ph).

THE COURT: -- when considered together with what a person of ordinary skill in the art would know would find obviousness. And the second is that Senara in combination with another patent --

MR. RIOPELLE: Viaresto.

THE COURT: -- would establish obviousness. And

that hindsight could not be used, there would have to be a reason for combining the two. You submitted the charge on obviousness, do you think both of those issues have been covered?

MR. GOETTLE: I think the hindsight is covered in the --

THE COURT: That was covered --

MR. GOETTLE: Yes, sir.

THE COURT: -- but what about two patents, two sources, that's one issue, and the separate issue, the -- combining the one patent with the knowledge of a person having ordinary skill in the art. It's funny, I read this, oh, I don't know, several times, but that came through to me as I --

MR. GOETTLE: And I just want to make sure that I understand the question, your Honor --

THE COURT: I'm concerned that maybe the agreed-upon charge on obviousness has not covered all of the issues that were presented on that. Now, I don't think the jury is going to get very far in their deliberations tonight. My suspicion is they're going to want to go home and start tomorrow morning. And if you agree with me, I think we ought to get together and it doesn't matter whether the jury starts deliberating, they're not going to get very far before we read to them any supplemental charge on obviousness.

MR. RIOPELLE: I think since this would affect Sprint the most, I think Sprint believes this is broad enough to cover the obviousness.

THE COURT: Well, I'll let the jury go back into the jury room and tell them, I want a note telling me whether they're going to stay tonight or go home. And then we'll talk about it further. When I read it, it didn't say that to me. I think -- I don't know -

MR. HANGLEY: I think it's more of an agreement, your Honor. We don't have the other issue.

MR. GOETTLE: So, can we, yeah, can we just look real quick at this. To me, when I read it, it's like actually, I'm not sure it's covering, but I just would like to read that briefly --

THE COURT: Okay.

MR. GOETTLE: -- just to see if --

THE COURT: I marked two pages. I called a reference to the word, convoyant, yes.

MR. FINKELSON: Convoyed -- convoyed sales.

THE COURT: Convoyed sales.

MR. FINKELSON: I think you're really just conveying that --

THE COURT: I don't think we have to change that.

They're not going to think that convoy --

MR. FINKELSON: Is that a rhetorical question?

THE COURT: But there was another Georgia, no, not Georgia Pacific obviousness --

MR. HANGLEY: Two lawyers who refer to the message server as being in the opposite place from where they are.

THE COURT: Does the Georgia -- no, this is not Georgia Pacific, this is obviousness. Doesn't the prior art teaches away from combining elements in the claimed invention? All right, that's part of the obviousness charge, we'll come back tomorrow morning. Have I covered, Milahn, the second -- the lighter color is yellow, that -- thank you. So, I think we covered the exhibit list for the jury. Explain the date. I'll give you a copy of the revised page two of the table of contents. I'll have some words for the jury now.

THE DEPUTY CLERK: Judge, there's only one thing I want to say about the jury staying late tonight. They have already indicated that they do not want to stay late tonight. Two of them have plans. On the same note, they indicated that they will most likely want to stay late tomorrow night, as in well after 5:00.

THE COURT: Okay, we'll see that closely. Okay,

anything else?

MR. HANGLEY: No.

MR. GOETTLE: Thank you, your Honor.

MR. FINKELSON: Thank you, your Honor.

(End of sidebar discussion.)

THE COURT: Ladies and gentlemen, that completes the charge. There is one issue that we're going to discuss with counsel, so there might -- I underscore the word might -- be a very, very, very -- three verys short -- addition to the charge. I'm not certain about that. But we will not hold you for that tonight. We'll do that when we resume deliberations.

My plan was to send you back to the jury room and have you tell me whether you wished to stay tonight or you wish to go home, it's now 4:20 and begin deliberations tomorrow. But that plan was thwarted by advice that you've given Ms. Hull, telling her that if you have any choice, you'd prefer to go home. I don't generally poll the jury in open court on issues like this. But is there any one of you who objects to going home now? I see no, I see absolutely no hands. What I see are smiles. That tells me that we're going to adjourn for the evening. You now have been charged, there was three black notebooks that will be presented to

you. The lawyers will gather their exhibits, I think they're already in the appropriate part in this. You will be given your list of the exhibits with numbers and descriptions. Hopefully, you'll be able to work through them. If you have any questions, you should not hesitate to submit them as I've instructed you. The foreperson writes out the question and submits it to me. I discuss it with counsel and then we answer it.

I've just given you all of the instructions that I need to give you. We'll resume, well, we'll start deliberations tomorrow morning at 9:30. Do not begin discussing the case until all of you are present. You'll not be called back into the courtroom unless we have -- well, I'm glad my voice waited until I got finished -- we'll not call you back into the courtroom in the morning unless I have an additional instruction to give. So, 9:30, when all of you have gathered, you can begin your deliberations. The exhibits will be -- I think we'll get them into the jury room tonight with the exhibit lists. We'll leave copies of the charge, they're in the black binders, three copies of the charge for you. And if there is an additional instruction, I'll call you back.

We're going to order lunch for you. When a jury

deliberates we order lunch so that you can continue your deliberation over the lunchtime. At day end, which is around now, you'll tell me whether you wish to continue your deliberations and you'll also tell me whether you wish to stay for dinner or just work later. If you work later and you miss a bus, train, ride, we'll arrange to send you home. I don't want you to think you'll be getting a stretch limousine, it will be more like one of the airport services. I don't think there's anything else we have to address and we'll do that by note. Once you have been in the courtroom during the day, I want you to send me a note about 4:15, telling me whether you wish to stay. If not and I had forgotten about it, Monday is a legal holiday.

MR. HANGLEY: Yes.

THE COURT: Yes.

MR. HANGLEY: Yes, it is.

THE COURT: Yes, it is. Thank you, Mr. Hangley. I was waiting for confirmation.

MR. HANGLEY: My permission.

THE COURT: I wasn't sure and I am right, the courthouse is closed. It's Presidents Day and I don't want to -- I don't know what you would ordinarily do on Presidents Day. But because it's such an important holiday and we

commemorate some very significant people, I'll not want to call court on Monday. So, if you don't reach a verdict on, well, tomorrow, Friday night, we'll resume on Tuesday, Tuesday morning. More on that tomorrow.

If you have any logistical issues or other issues, let Milahn know and she'll communicate those matters to me. On that note, is there anything else we have to say before the jury is released for the evening?

MR. FINKELSON: No, your Honor.

MR. GOETTLE: No.

THE COURT: Well, have a safe trip home. See you back here bright and early tomorrow morning. And again, you could begin your deliberations when all of you, all eight of you, are assembled. We'll have, as I said, instructions and the exhibits in the jury room. You leave your juror notebooks and the binders, the binders have some things, the claim construction is both in the binder and in the instructions, the jury charge. But the binder has a quick, easy to find patent -- and the glossary which is very, very important. And sentences that run on with three or four or five acronyms, it helps to have the glossary right there. And that note, I'll excuse you for the evening. What's that?

(Discussion off the record.)

THE COURT: Ms. Hull wants you to give -- I'm not going to give you my usual day-end instructions. I've just done it for an hour and a half. Just one, maybe. If your family at home or any other persons at home ask you what you did today, you can't tell them. You sat in on a very interesting jury trial, which you're going to have to decide starting tomorrow. You can tell them that much and that's all. On that note, thank you for the reminder, Ms. Hull. On that note, we are adjourned until tomorrow morning at 9:30.

THE DEPUTY CLERK: All rise.

THE COURT: Be seated, everyone. I heard Mr. Hangley say at sidebar, that well, if we agreed on something, it's not an issue on appeal. You're right. But if this was an oversight, I wanted to call it to your attention. And I think you should take a look at it. I'm talking about the obviousness charge, which begins on page 29 and continues to page 30. I've read it, at least, two or three times before today, but it was only on the -- on today's last reading that it occurred to me that there was a slight disconnect. It might be broad enough, as Mr. Riopelle --

MR. FINKELSON: And we're investigating with respect to that question, your Honor.

THE COURT: It might be broad enough to cover the

case, but I want you to think about that.

MR. FINKELSON: And that's what we're doing, we're checking it right now and we'll advise the Court.

MR. HANGLEY: I thought it was, but we are looking at it, too.

THE COURT: All right, is there anything else we have to discuss?

MR. HANGLEY: I don't think so, your Honor.

MR. FINKELSON: Not for Sprint, your Honor.

THE COURT: All right, on that note we're adjourned. I think we ought -- we're going to have to convene tomorrow at 9:30 to address obviousness and we're not going to require that you remain in the courthouse. We'll get contact information. You're both rather close by. If we have jury questions, it's my practice to call everyone back before answering it, almost without exception. I say almost, if they ask for some equipment, a blackboard, which is always --

MR. HANGLEY: Welcome.

THE COURT: -- it's looked upon favorably by plaintiffs.

MR. GOETTLE: It sure is.

THE COURT: And not so favorably by --

MR. FINKELSON: It's better than a calculator, but

it's --

THE COURT: -- by defendant. But normally, I call everyone back. So, we'll get your cellphone numbers if we don't already have them. And on that note, we are in recess, we are adjourned for tonight. 9:30 tomorrow morning.

THE DEPUTY CLERK: All rise.

ALL: Thank you, your Honor.

(Court adjourned 4:29 o'clock p.m.)

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INDEX

CERTIFICATION

I hereby certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

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